
United States
Circuit Court of Appeals

For the Ninth Circuit.

HELEN M. SUTHERLAND, CHARLES W.
SUTHERLAND, M. I. HIGGENS, MAY-
BELLE HIGGENS and HELEN MAUDE
LORENZ,

Appellants,

vs.

FRANK A. GARBUTT, CHANDIS SECURI-
TIES COMPANY, a corporation, ALICE
CLARK RYAN, LOG CABIN MINES COM-
PANY, a corporation, and MUTUAL GOLD
CORPORATION, a corporation,

Appellees.

Transcript of Record

In Two Volumes

VOLUME II

Pages 485 to 825

FILED

MAY 11 1942

Upon Appeal from the District Court of the
United States for the Southern District
of California, Central Division.

PAUL P. O'BRIEN,
CLERK

No. 10,078

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Upon Appeal from the District Court of the
United States for the Southern District
of California, Central Division.

JOSEPH A. VANCE,

called as a witness on behalf of defendants, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

A. Joseph A. Vance, Seattle.

Direct Examination

Q. By Mr. Hinckle: Mr. Vance, you were a director of Mutual Gold Corporation, were you, on August 6, 1938? A. Yes.

Mr. Abel: Speak up, speak up, please.

A. Yes.

Q. By Mr. Hinckle: You had been a director for some years before that, had you not?

A. Yes, sir.

Q. You remained one until September the 19th, 1938, did you not?

A. I think it was September the 19th; August 19th or September 19th.

Q. It was about that date. That is close enough as far as I am concerned. You had read the proposed Garbutt contract, had you, Mr. Vance, before it was approved by the board of directors?

A. No; I don't think so.

Q. I will show you here a 4-page letter which does not bear date but which, as a matter of fact, was sent out about [327] September the 12th, 1938 and which bears or apparently bears your signature, and ask you if that is your signature, Mr. Vance?

A. Yes.

(Testimony of Joseph A. Vance.)

Q. Did you write this letter by yourself or did you have some assistance in writing it?

A. Well, I might have had a little assistance.

Q. Who gave you the assistance?

A. I am not certain, but I think it was Mr. Abel. I wrote most of the letter myself.

Q. This is addressed, as you will note, to the "Stockholders of Mutual Gold Corporation." Did you cause that to be sent out to the stockholders of the Mutual Gold Corporation, Mr. Vance?

A. Yes.

Q. Isn't it true that you sent this out for the purpose of acquainting them with your objections to the Garbutt contract?

A. Yes. [328]

Mr. Hinckle: I will offer it as Defendants' exhibit.

The Clerk: B.

DEFENDANTS' EXHIBIT B

(Post card addressed to)

Mr. A. P. Bateham,
424 Symons Block,
Spokane, Wash.

PROXY

Know All Men by These Presents that I, the undersigned, do hereby constitute and appoint A. P. Bateham or R. P. Woodworth or..... my true and lawful attorney to represent me at the Special Meeting of Stockholders' of Mutual Gold

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

Corporation to be held on the 24th day of September, 1938, at eleven o'clock A. M., at the office of the Company, 401 Fernwell Building, Spokane, Washington, and I do hereby revoke any and all proxies by me heretofore given; and I do hereby direct my said proxy to vote against the Garbutt contract, and do hereby otherwise authorize and empower my said proxy to vote at said meeting and at any adjournment or adjournments thereof for me, and in my name and stead, upon the stock now standing in my name on the books of the said Company, hereby giving and granting unto my said attorneys, and each of them, full power of substitution and all the power that I should possess if personally present at such meetings.

Witness my signature this day of September, 1938.

Witnessed by:

.....
(Date, sign and mail at once)

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

[Sent out to Stockholders of Mutual Gold from
Seattle (not at company's expense)]

[Sent with Fuson's letter of 1-2-40]

(Not dated)

(Sent about 9/12/38)

Stockholders of Mutual Gold Corporation.

Dear Stockholder:

I became actively interested in the Mutual Gold Corporation in the Spring of 1936, when I was made General Manager of the Company. At this time the Company was out of funds and had obligations to meet which included the completion of the mill. I, at that time, agreed to underwrite an issue of \$30,000.00 in production notes and stock to complete the mill and put it into production. I asked to be made General Manager as I wanted to know where my money was being spent, and how. My original estimate of the cost of completing this mill would have stood correct at \$30,000.00 if it had not been for the fact that the mine had been so poorly managed previously that the following items, which I did not know about, had to be repaired:

Approximate

1. Repairs to auto truck.....	\$ 700.00
2. Replacement of frozen water pipe (4000 feet)	1,600.00
3. Repairs to flume.....	840.00
4. New pipe for flume.....	180.00
5. Hauling of same.....	25.00

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

6. New pipe to cook house and mill.....	750.00
7. Other cost for office expense which was not figured in the cost of erecting the mill:	
Office expense	2,810.00
Capital Stock Tax.....	1,403.85
Insurance	748.30
Total.....	\$9,057.15

The additional money necessary to complete the mill, in the amount of \$8,000.00, I advanced personally on open account. Again, when the November 1st, 1937, payment on the contract of \$10,000.00 was due, Mr. Ferbert and Russel Collins begged me to advance the money to save the property, for which I wrote my personal check.

The Directors of Mutual Gold Corporation suggested that Mr. M. J. Keily be made superintendent of the Mine. Mr. Keily was a representative of the Mine looking out for the interests of the owners and at the same time superintendent of our Mine.

In the fall of 1937, while the property was in operation, I was there personally on the ground and the mill showed a gross return of around \$10,000.00 per month, which left a small balance for profit. I told Mr. Keily at that time I could see no reason why the Mine should not produce the equivalent of that every month as I knew it could be done if it were properly worked.

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

About this time they were having trouble with stacking of the tailings. I suggested that three settling dams be put in but Mr. Keily, against my orders, spread them over the hillside. This made it impossible for us to recover anything from the tailings and at the same time caused some water pollution to a stream below us.

Every engineer and all the members of the Board of Directors who have looked at the property were of the opinion that we had free milling ore. Mr. Keily, the mining superintendent, was no exception. I asked him and Mr. Haley, the millman, in the fall of 1937 if we should not take samples of heads and tails to see what possible loss we were having. Mr. Keily made the statement that he knew what they were getting out of the mill and that they were recovering all that could be expected. However, assays were taken which proved unreliable as Mr. Haley, who had taken the samples, had no doubt made several mistakes as in some cases the tails ran higher than the heads. These returns were not known until the snow set in. If the tails were running out of proportion to what they should, the question would be whether to shut down or to operate and develop further ore reserves. Mr. Keily, Ferbert, Collins and other members of the Board were firm in the belief that the thing to do would be to develop a greater tonnage. The work was con-

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

tinued and it is true that a Mine has been developed due to the operation last winter.

No further samplings were taken until the next spring when I convinced the Board of Directors the smart thing for us to do would be to take a competent engineer down on the property and make a report to us as to the amount of ore we had in sight, the value per ton of recovery we had made and what our loss was. No one knew what the loss of the tailings was until after the engineer, Mr. Cole, had made his report in June. This report, by the way, has been the only thorough and finished report that has ever been made on the property, the general substance of which was given in the annual report of the President and by Mr. Cole himself, at the stockholders' meeting in Spokane on August 6th, 1938.

In the first part of May, Mr. Keily shut the mill down because of the runoff of the snow carrying the tailings down the hill and polluting the stream below.

Immediately after the report was finished, I decided the only thing for the Mutual Gold to do would be to put the Mine into production this summer as there was a \$10,000.00 payment due on the contract November 1, 1938, and as it would cost another \$10,000.00 to \$20,000.00 to carry on through the winter. In addition to that if the mill were put

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

into production, there would be a year's time saved due to inaccessibility to the Mine during the winter months.

Several large mining concerns were contacted by myself and the Directors to make a sale of one-half interest or better in the Mutual Gold Corporation and its property, so that sufficient money would be raised to insure the erection of a large mill and cyanide plant and enough funds to take care of the outstanding obligations of approximately \$22,000.00. It soon became evident that we could not interest any one in this proposition and in order to assure the completion of the mill and power line and have sufficient money for supplies my son, Lloyd J. Vance, made a proposal that he would personally guarantee up to \$70,000.00, sufficient funds to do the same. This proposition has been more fully described in the President's letter to the stockholders of July 20th.

The Board of Directors recommended the acceptance of this proposal and called a meeting of the stockholders for August 6th, 1938, to ratify it. The two-thirds majority of the stock was represented which gave the Board of Directors the authority to make a deal with Lloyd J. Vance, or any different deal that they saw fit.

At this time Russell Collins and Mr. Ferbert had a telegram from Mr. Garbutt, the Owner's repre-

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

sentative in Los Angeles, alleging that he had a party in California that would be willing to make approximately the same kind of deal that Lloyd *and* proposed. The Board then refused to take action on the Lloyd J. Vance proposal had delegated Mr. Ferbert and Mr. Collins to meet the party in Los Angeles to work up some form of a contract. This was done over the objection of Mr. Woodworth and myself as I was afraid it would mean such delay that it would be impossible to get the new mill in before snow fall, and also because of the fact that I did not believe they would offer a contract as reasonable as the one offered by Lloyd, nor would it give the stockholders, both large and small, the privilege of sitting in on the new company on an equal basis. If the stockholders did subscribe, they would have complete control of the new company. Lloyd's contract was merely a guarantee so that the property could immediately be put into production. Five Directors' meetings have been held since that time, each meeting expecting to take action on Lloyd's proposal or the one later submitted by Mr. Garbutt personally, the owners' representative, continually delaying a fair offer trying to get a similar one from Mr. Garbutt.

Mr. Garbutt has sent us a letter as notice of cancellation of the contract which, if legal, would mean the Mutual Gold has lost its mine. However, I would

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

not be disturbed about this as I have had legal advice from various competent attorneys that the contract is not subject to cancellation at this time under the law. In addition to this unfortunate occurrence, the delay will have cost Mutual Gold Corporation approximately \$150,000.00 that would have accrued over the period of the next ten months in the way of profits and an additional cost that will have to be met to carry on this winter, in the amount of \$20,000.00.

I have done everything that I possibly could to save this property for the stockholders and at the same time to protect your interest and my interest, and all would be in fine shape now if it had not been for the delay caused by the Board of Directors. A fairer proposition than the one presented by Lloyd could not have been given the Mutual Gold Corporation, nor has a proposition anywhere nearly as good been submitted to date by any member of the Board.

The majority of the Board of Directors have entered into a contract with Mr. Garbutt, and a meeting of the stockholders is being called to ratify this agreement, or failing in that to authorize the deal with Lloyd or any other deal that may be submitted at that time. The proxy that will be sent you for that meeting contains the name of Mr. J. E. Stiegler, and unless you cross out this name and

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

write in the name of someone else who is opposed to the deal, your proxy may be voted in favor of the Garbutt deal.

The Garbutt contract should be rejected by the stockholders of Mutual Gold Corporation because:

(1) The directors of Mutual Gold have really been forced to execute it under a threat that the owners would forfeit the contract of purchase of the mine property and at the same time the agent of the owners insists upon a sale of the property to himself.

(2) The Garbutt contract provides that the property be conveyed to him and he is not actually required to put up over \$10,000.00. The corporation he is to organize can really do what it pleases with the property. Please carefully read the Garbutt contract, Paragraph 2. The corporation is to agree not to sell the real estate unless the "(a) written consent of the seller", or "(b) the vote of a majority of the directors of the corporation", that means the Garbutt corporation, or "approved by its stockholders", that means the stockholders of the Garbutt corporation. Since Garbutt will have fifty percent of the stock plus our share, if he decides to sell he can vote to do so and in that event he can sell for much or little as he pleases, and the stockholders of Mutual Gold are out. In this way Garbutt can obtain title to the Mutual Gold property for

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

\$10,000 and the corporation he forms can sell when Garbutt or his board of directors decides and at any price they please. There is no provision at all in the Garbutt contract that the creditors or stockholders of Mutual Gold Corporation shall be paid anything.

(3) While Garbutt's corporation is to furnish additional funds to a minimum of \$100,000, there is no provision as to what the capital stock of the Garbutt corporation shall be, or that it will ever have funds with which to pay the \$100,000. The joker in this respect is in Paragraph 2 of the Garbutt contract, under which he is to transfer the titles received from Mutual Gold and issue all of the capital stock of the new corporation fully paid up, so that there will be no money go into the Garbutt corporation unless it borrows it. It will have no stock for sale to realize money from. In Paragraph 9 of the Garbutt contract the buyer agrees to co-operate with the seller in every reasonable way to protect the stockholders' interest in order that the smallest shall receive benefits proportionate to the largest. Perhaps Mr. Garbutt thinks the forfeit of the Mutual Gold contract is reasonable.

(4) The 9th paragraph also provides that the buyer shall be entitled to be repaid for all advances made by him out of the profits or funds. These advances would be the original \$10,000 and all the

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

subsequent money that goes into the Garbutt corporation. In this respect, all the advances made by Garbutt or the Garbutt corporation will be loans, so that it will have received a deed to all the Mutual Gold property and yet get back all that it has paid or advanced before Mutual Gold stockholders are entitled to receive anything, with no provision to pay creditors of Mutual Gold.

(5) Paragraph 9 does not require Garbutt to make any advances. He may quit after putting in the first \$10,000. He may then decide to stall and if he does the only remedy that Mutual Gold has will be to elect a majority of the board of directors, in which event Garbutt shall be entitled to "the repayment to the Buyer of the monies advanced by him, or (b) the securing of same by a first lien upon the assets of the corporation".

(6) Garbutt represents the owner, and if he should refuse to put in over \$10,000.00 the property is lost to Mutual Gold because Garbutt and the owner will be controlling on both sides of the table—buyer and seller—owner of the mine and the operating company. If Garbutt advances only the \$10,000 and then quits there can be no profits out of which to pay him and he will then have to be paid out of funds derived from sale of the property, and since the title will be in the Garbutt Company, he can make sale in order to pay himself. The

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B continued.)

only other way to pay him would be the sale of the stock obtained by Mutual Gold.

(7) If the Garbutt contract is approved Mutual Gold will have no money at all to pay its creditors, and to raise money to do so there is a verbal proposal from Mr. Garbutt that he will arrange a loan of \$25,000 and all of the stock that the Mutual Gold receives of the new corporation will be put up as collateral. Since Mutual Gold will have no money to pay the \$25,000 and no stock to sell to repay it, the practical effect will be that Mutual Gold will lose all the stock it received from Garbutt in his corporation and the present stockholders of Mutual Gold will receive nothing.

At the last stockholders' meeting you authorized the board to accept the Lloyd J. Vance proposal or any other proposal. This proposal was very much better for the stockholders than the Garbutt proposal because:

(a) All stockholders of Mutual Gold had the right to come in and participate on equal terms.

(b) Lloyd Vance agreed to advance \$70,000 and if not subscribed to by present stockholders he was to take stock in the new company and be repaid out of profits.

(c) He agreed to take care of the debts of Mutual Gold. The new company to be organized was to have only fifty per cent of the property, the other

(Testimony of Joseph A. Vance.)

(Defendants' Exhibit B—continued)

fifty per cent remaining the property of Mutual Gold.

Under the Garbutt contract he "advances" (really a loan) only \$10,000 and is to get a deed to all the property.

I ask you to be present at the stockholders' meeting or give your proxy to R. P. Woodworth who will be sure to vote against the Garbutt proposal and indicate your preference for the Lloyd Vance proposal.

J. A. VANCE,

General Manager

Mutual Gold Corporation.

Q. By Mr. Hinckle: I show you another letter, Mr. Vance, that bears date January 21, 1939, and apparently has [329] your signature. Is that your signature?

A. That is supposed to be my signature. It has been so long, it has been so long since I have read those things. That is my signature all right.

Mr. Abel: Concede the letter.

Q. By Mr. Hinckle: Do you concede, Mr. Vance, that this was sent out to the production noteholders of the Mutual Gold Corporation on or about the date it bears by Mr. Vance?

A. Well, I think so.

(Testimony of Joseph A. Vance.)

Mr. Abel: I make the admission.

Mr. Hinckle: I offer this as defendants' next exhibit.

The Clerk: Exhibit C. [330]

DEFENDANTS' EXHIBIT C

Seattle, Washington

January 21, 1939

To Production Noteholders of Mutual Gold Corp.

Dear Noteholder:

I have been notified the annual meeting of the stockholders of Mutual Gold Corporation will be held at Spokane on February 1st.

Unless you have disposed of your stock in Mutual Gold, you have undoubtedly been advised as to the Board's action in transferring all of the assets of Mutual Gold to a Mr. Garbutt. As noteholders you and I are vitally interested in the effect this transaction will have upon our security and collection possibilities.

As a matter of fact our present Board has ignored our interests entirely. What security we might have had is gone. Mr. Garbutt now has possession of our property in addition to a first lien on it.

At the time these notes were sold, the directors and officers of Mutual Gold entered into a written contract with me making me general manager of the property, as I was the largest contributor, with the provision that either I or some other person

(Testimony of Joseph A. Vance.)

elected by a majority of the noteholders should continue as manager until our money had been returned. The same officers and directors now have transferred all of the assets; have given the management of the property to Mr. Garbutt; have recognized his advances as a prior lien and left us with nothing, neither a promise we will be paid nor a hope that we might.

As far as my personal advances are concerned I am going to do all I can to see that some way can be arranged for their payment.

At the meeting to be held on February 1st, I shall personally be present and am enclosing a proxy for you to sign and return to me if you cannot be there personally.

A new Board of Directors will at least be a step in the right direction.

Yours very truly,

J. A. VANCE

[Sent with Fuson's letter of 1-2-40]

Q. By Mr. Hinckle: Mr. Vance, did you attend a meeting of the Mutual stockholders which was held on August 6, 1938? A. August the 19th?

Q. August the 6th. A. Yes.

Q. Did you at that meeting vote for the resolution that was adopted at that time authorizing the

(Testimony of Joseph A. Vance.)

directors to deal with the property as they saw fit, or words to that effect?

Mr. Abel: Well, may I make an admission? I don't want to be precluded on the form of the question as to the contents of the resolution. I admit that Mr. Vance voted for the resolution.

The Court: The minutes speak for themselves.

Mr. Abel: On which you rely to justify the new corporation.

Mr. Grill: The minutes do not show that particular portion.

Mr. Hinckle: I think the minutes won't show that.

Mr. Abel: They do not show that Mr. Vance personally voted.

Mr. Grill: Is it admitted? [334]

Mr. Abel: I concede that he did.

DEFENDANTS' EXHIBIT E

September 20, 1938

Stockholders of Mutual Gold Corporation

Dear Stockholder:

We, the undersigned stockholders of Mutual Gold Corporation, protest the action taken by the Board of Directors at a Special Meeting held in Seattle Monday morning, September 19th, at which meeting the majority of the Board voted in favor of cancelling the stockholders' meeting called for Septem-

(Testimony of Joseph A. Vance.)

ber 24th at Spokane. Those voting for were Mr. Stiegler, Mr. Hickcox, Mr. Grill, Mr. Ferbert and Mr. Collins. Those voting against were Mr. Woodworth and Mr. Vance.

The Board then immediately ratified the Garbutt contract and authorized its officers to deed all of our right, title and interest in everything the Mutual Gold Corporation owns to Mr. Garbutt. Those voting in favor were Mr. Stiegler, Mr. Hickcox, Mr. Grill, Mr. Ferbert and Mr. Collins. Those opposed were Mr. Woodworth and Mr. Vance. Immediately thereafter Mr. Woodworth and Mr. Vance resigned as directors of the Mutual Gold Corporation explaining that they did not feel this action taken was to the best interests of the stockholders. They refused to be any longer connected as officers of the corporation.

The Board's purpose in calling the stockholders' meeting was to leave the decision up to us stockholders as to whether or not we were in favor of the Garbutt deal. They now have taken that decision out of our hands.

We have been opposed to the Garbutt proposition and now we are even more incensed over the action taken by the Board. We are notifying you that regardless of the Board's decision, a stockholders' meeting will be held at Spokane on the 24th. We are sending our proxies to Mr. Bateman and Mr. Woodworth protesting the Garbutt deal and urgently request that you do the same so that you may

(Testimony of Joseph A. Vance.)

go on record as having been opposed to the Board's action and Mr. Garbutt's contract.

If you have already signed a copy to Mr. Stiegler and you sign and date the enclosed proxy, the one to Mr. Stiegler will be cancelled. Please mail immediately.

Yours very truly,

CHARLES DUNN

WALTER G. PEEBLES

LOUISE WOODWARD

E. C. STAHLHUT

MERRITT H. C. ALLEN

ELMER T. FEHNEL

W. D. CHARLES

[Sent out to stockholders (not by Co.)]

PROXY

Know All Men by These Presents that I, the undersigned, do hereby constitute and appoint A. P. Bateham or R. P. Woodworth or..... my true and lawful attorney to represent me at the Special Meeting of Stockholders' of Mutual Gold Corporation to be held on the 24th day of September, 1938, at eleven o'clock A.M., at the office of the Company, 401 Fernwell Building, Spokane, Washington, and I do hereby revoke any and all proxies by me heretofore given; and I do hereby direct my said proxy to vote against the Garbutt contract, and do hereby otherwise authorize and em-

(Testimony of Joseph A. Vance.)

power my said proxy to vote at said meeting and at any adjournment or adjournments thereof for me, and in my name and stead, upon the stock now standing in my name on the books of the said Company, hereby giving and granting unto my said attorneys, and each of them, full power of substitution and all the power that I should possess if personally present at such meetings.

Witness my signature this day of September, 1938.

.....
Witnessed by

.....
(Date, sign and mail at once)

DEFENDANTS' EXHIBIT F

Spokane, Washington
January 30, 1939

Mr. Charles Blank,
Latah, Washington.

Dear Mr. Blank:

The Stockholders Protective Committee of the Mutual Gold Corporation feels that some change should be effected in the Garbutt contract to protect the stockholders of the Mutual Gold against the loss of their property, and believe that some

(Testimony of Joseph A. Vance.)

changes in the contract should be made to provide for the following:

1. Some provision for the protection of stockholders against immediate repayment of any and all advances made by Garbutt, in the event of his death. All of the property of the Mutual Gold has been assigned to Mr. Garbutt and demand notes are being issued, due one day after date, for all advances and in the event of his death his representatives could demand immediate payment and Mutual Gold Company, unable to make such payments, would lose this property.

2. Adequate time within which to make repayment in the event that Garbutt elects to withdraw from further management, which right he has reserved, and he may withdraw at any time.

3. Some provision to pacify old creditors and note holders so that no suit, action or trouble will crop up in that respect.

4. Some additional protection with respect to the sale of the property so that same will not be sold without such offer of sale being submitted to the stockholders of Mutual Gold and authorized or ratified by at least a majority vote.

5. Provision to protect stockholders against suit or damage action with respect to tailings.

6. Itemized monthly statement of receipts and disbursements with usual monthly balance sheet.

7. Some provision for a small sum annually to

(Testimony of Joseph A. Vance.)

take care of the necessary overhead of the Mutual Gold, such as taxes, postage and office expense, all of the income at the present time going to Garbutt.

The Committee extended an invitation to Mr. Garbutt to be present at the Stockholders' meeting that these matters might be discussed with him personally, but he advised that he will be unable to attend and suggested that we take up with him, personally, matters which are bothering us, which we are now doing.

We feel that one of the things advisable to obtain these changes in the contract is to elect some new members to the Board. If you agree with us we will appreciate your signing and returning at once proxy enclosed herewith. The execution of this proxy will cancel any proxies previously given.

Very truly yours,

A. P. BATEHAM,

Chairman

Stockholders' Protective Committee

424 Symons Building,

Spokane, Washington.

APB:T

PROXY

Know All Men by These Presents: That I, the undersigned, do hereby constitute and appoint A. P. Bateman or R. P. Woodworth or Clarence Colby or my true and lawful

(Testimony of Joseph A. Vance.)

attorney and proxy, with power of substitution, for me and in my name and behalf, to vote at any election of the stockholders of the Mutual Gold Corporation for directors or other purposes, occurring within seven months from the date hereof, and also to vote on any and all matters and questions which may be presented and considered at any annual or special meeting of the stockholders of the said Mutual Gold Corporation occurring within the said period, as fully and with like effect as I might or could have done if I had been personally present and voting thereat, and hereby revoke any and all proxies by me at any time heretofore given.

In witness whereof I have hereunto set my hand and seal the day of January A. D. 1939.

..... (Seal)

Witness:

.....

[Sent with Fuson's letter of 1-2-40]

DEFENDANTS' EXHIBIT G

Spokane, Washington

September 13, 1938

Stockholders of Mutual Gold Corporation.

Gentlemen:

It is our understanding that you have not been furnished with a copy of the Garbutt contract to

(Testimony of Joseph A. Vance.)

be considered at the Stockholders' Meeting called for the 24th instant, and are, therefore, left completely in the dark in regard thereto, and are being asked to ratify, by proxy, something that you know nothing about.

We, as Stockholders of the Mutual Gold, therefore, after being fully advised in regard to said contract, as well as the Lloyd J. Vance proposed contract, believe it our duty to advise you that the Garbutt contract contemplates the immediate transfer of all of the assets which Mutual Gold now owns in exchange for stock in a new corporation to be formed by Garbutt, that the said contract is, in our opinion, woefully lacking in covenants binding the Garbutt corporation. To part with all of our holdings, as contemplated by the Garbutt contract, without binding such corporation to more definite performance is dangerous and might result very disastrously to the stockholders of the Mutual Gold. We are, therefore, definitely opposed to the Garbutt contract and believe that it should be rejected.

The offer of Lloyd J. Vance is, in our opinion, a better offer, more specific, definite and certain and should be given favorable consideration at the Stockholders' Meeting.

We earnestly request that you give this matter your serious consideration and if after such investigation you agree with us, it will be imperative that you instruct your proxy to vote against the Garbutt contract.

(Testimony of Joseph A. Vance.)

If you have already sent in your proxy without crossing out the name of Mr. Stiegler and inserting another name, and desire to vote against the Garbutt contract, we enclose a proxy herewith for your convenience, which should be signed and sent at once.

Very truly yours,
R. P. WOODWORTH
A. P. BATEHAM
A. F. McCLAIN

BARMAC PRODUCTION COMPANY
By A. F. McCLAIN,
President

INTERNATIONAL LAND COMPANY
By KENNETH G. LUKE,
President

ALFRED PAGE
ANNA E. HALL (Mrs. Dr. J. F. Hall)
ERICH T. RICHTER
HELEN L. HALFER
J. G. MATTHEWS, M.D.
C. H. COLBY
CHAS. P. JAEGER
MRS. F. O. ROSE
AVA B. COLBY

(Testimony of Joseph A. Vance.)

(Post Card addressed to)

Mr. A. P. Bateham,
424 Symons Block,
Spokane, Wash.

PROXY

Know All Men by These Presents that I, the undersigned, do hereby constitute and appoint A. P. Bateham or R. P. Woodworth or..... my true and lawful attorney to represent me at the Special Meeting of Stockholders' of Mutual Gold Corporation to be held on the 24th day of September, 1938, at eleven o'clock A. M., at the office of the Company, 401 Fernwell Building, Spokane, Washington, and I do hereby revoke any and all proxies by me heretofore given; and I do hereby direct my said proxy to vote against the Garbutt contract, and do hereby otherwise authorize and empower my said proxy to vote at said meeting and at any adjournment or adjournments thereof for me, and in my name and stead, upon the stock now standing in my name on the books of the said Company, hereby giving and granting unto my said attorneys, and each of them, full power of substitution and all the power that I should possess if personally present at such meetings.

(Testimony of Joseph A. Vance.)

Witness my signature this day of September, 1938.

.....

Witnessed by:

.....

(Date, sign and mail at once)

—————

DEFENDANTS' EXHIBIT H

4319 Latona Avenue
Seattle, Washington
September 17, 1938

To the Stockholders of Mutual Gold Corporation
Dear Stockholder:

We, the undersigned stockholders of the Mutual Gold Corporation, have read Mr. Stiegler's and Mr. Vance's letters and have studied the Garbutt Contract. We are opposed to Mr. Garbutt's contract as it is unfair and not to the best interests of the stockholders.

Since Mr. Bateham's and Mr. Woodworth's committee is opposed to the Garbutt Contract, we urge you to sign the enclosed proxy to them, if you haven't already signed one.

If you have signed a proxy to Mr. Stiegler, it

(Testimony of Joseph A. Vance.)

will be cancelled if you sign this proxy and date it.

Yours truly,

N. D. SHOWALTER, JR.

WALTER G. PEEBLES

LOUISE WOODWARD

W. B. CLIFTON

E. C. STAHLHUT

P. S. This proxy should be returned at your earliest convenience to the offices of Mutual Gold Corporation at 401 Fernwell Building, Spokane, Washington.

[Letter mailed to Stockholders (not at company's expense)]

DEFENDANTS' EXHIBIT I

Spokane, Washington

January 20, 1939

Stockholders Mutual Gold Corporation.

Dear Stockholder:

REPORT OF STOCKHOLDERS' PROTECTIVE COMMITTEE

You received notice of meeting called for September 24th, 1938, for the purpose of ratifying or refusing to ratify the Garbutt contract of September 2nd, 1938 (which had been approved by a majority of the Board subject to the ratification of the stock-

(Testimony of Joseph A. Vance.)

holders) which meeting was also called to consider and pass upon the offer of Lloyd J. Vance, or any other offer. Subsequently you received a letter from J. A. Vance, as General Manager, reporting on his management and analysing the Garbutt contract; and letters from various stockholders expressing their opposition to the Garbutt contract and requesting you, if you were not in favor of the Garbutt contract, to send in your proxies to some one who was not pledged to vote in favor of such contract.

Prior to this Stockholders' Meeting, however, the President called a special meeting of the Board to reconsider the action taken by the Board in the ratification of the Garbutt contract, and to consider any other proposal that might be brought before said meeting. At this meeting, which was held on September 19th, the Board ratified the Garbutt contract and cancelled the Stockholders' Meeting called for September 24th, and under date of September 20th notice of the ratification of the contract and cancellation of the meeting was sent to you by the President. On September 20th several stockholders also sent out a letter informing you of the action taken by the Board and advising that the meeting of Stockholders' would be held as called.

At the time fixed for this meeting, stockholders appeared for the purpose of holding the meeting, and requested the proxies which had been sent in for the meeting, specific demand being for the proxies which had been sent with the name of J. A.

(Testimony of Joseph A. Vance.)

Vance, R. P. Woodworth or A. P. Bateham therein designated as proxy. This demand was refused and, being unable to obtain such proxies, the meeting, only having the proxies which had been sent direct to Mr. Bateham, elected a Stockholders' Protective Committee for the purpose of taking such action as they might see fit to protect the interests of the stockholders' and creditors'.

Under date of September 30th Mr. Ferbert and Mr. Collins each wrote you, with what intent other than to air a personal grievance, we are unable to discern. We have no intention of taking sides in any personal animosities, nor to confer a dignity upon these letters which they do not deserve by answering them. That you may not be misled by anything contained therein, we call attention in passing, to the fact that Russell F. Collins resigned as President of the Board on November 24th, 1934. Mr. Vance was not elected as General Manager until August 22nd, 1936. The mill was built long prior to this and while Mr. Collins was President, and the flume was built by Mr. Horner, and proposed by Mr. Nelson, engineer in charge at that time—about September 1935.

Under date of September 26th, 1938 you received a letter from the President enclosing a so-called "Progress Report" signed by Frank A. Garbutt; and again under date of December 1st, 1938, you received a letter from the President enclosing "Progress Report" dated November 22nd, 1938,

(Testimony of Joseph A. Vance.)

signed by Mr. Garbutt. No comment is made in regard to these letters as you have copies thereof and can judge for yourself. Your attention is called, however, to the statement regarding the inadequacy of the mill in the first, and in the second that the old mill had been revamped at very little cost.

In between these dates, and on or about October 31st, 1938, an agreement was made and entered into between your corporation and Mr. Frank A. Garbutt, which recites:

“Referring to that certain contract entered into with you on September 2nd, 1938, and again on September 22nd, 1938, I hereby withdraw from same as it is therein provided that I may do and I also elect to, and do hereby terminate my liability thereunder.

“I (Garbutt) have fully performed my part of said contract to date and admit and agree that you likewise will have wholly performed said contract on your part as soon as you give me the security contemplated therein. * * *”

On or about November 1st, 1938, an agreement was entered into between the same parties, too long to set out in full, but among other things cancelling the contract referred to above, and agreeing that Mutual Gold Corporation should execute its notes due one day after date with interest at 6%, and that Garbutt may and shall hold title to the real and personal property heretofore conveyed to him by Mutual Gold Corporation, in trust as security for

(Testimony of Joseph A. Vance.)

the payment of said notes, and further providing that should the Mutual Gold Corporation organize a new corporation to take over and hold said property (the property transferred to Garbutt as security for money advanced by him) that Garbutt will transfer said property to such new corporation and in exchange therefor is to receive as security for his said notes all of the stock of such new corporation.

This seems to bear out the statement which we made to you in regard to this contract of September 2nd, that it contained no binding obligations of any kind on Mr. Garbutt.

While the contract of September 2nd indicated that itemized monthly statements would be made to Mutual Gold Corporation, such information does not seem to be available at the office of the Company. The last trial balance sheet available is for the month of September 1938. Expenditures seem to be mounting rapidly and fantastically, far above estimates, with no detailed information in that regard, and the old mill still on the job.

We understand that a new contract has been executed by Mutual Gold Corporation and sent to Garbutt for execution, but that same has not been executed by him. Is this contract held up advisedly so that no comment may be made thereon and the stockholders kept in the dark in regard thereto?

We are advised that the Annual Meeting of the Stockholders will be held at the office of the Com-

(Testimony of Joseph A. Vance.)

pany on February 1st, 1939, for the election of a Board of Directors and, presumably, for other purposes, notice of which you will, undoubtedly, receive prior to the receipt of this letter. We also assume that such notice will be accompanied by a proxy made out to some member of the Board of Directors.

What is to become of Mutual Gold Stockholders in the event of Garbutt's death, all of his demand notes become immediately due and payable? Don't you think that some effort should be made to protect the stockholders of Mutual Gold in such event? We believe that some provision can be made in this and other respects to better protect the interest of the stockholders, and that some change in the Board of Directors is desirable, that some effort may be made to effect such changes.

We are enclosing herewith, for your use, blank form of proxy, should you feel that our efforts in your behalf are worthy of your consideration. The address on this proxy is made to my office so that the Board will not be able to withhold delivery or inspection thereof, as they did at the last meeting. This proxy will cancel other proxies that may have been previously given.

Very truly yours,

A. P. BATEHAM,

Chairman

Stockholders' Protective Committee
424 Symons Building,
Spokane, Washington.

(Testimony of Joseph A. Vance.)

Mr. Hinckle: Are you willing to stipulate that an agreement dated August 23, 1939, executed by the Mutual Gold Corporation, Frank A. Garbutt, and the Log Cabin Mines Company, was executed by the various parties and delivered?

Mr. Abel: I will do so on one condition, and that is that it was not signed by Mr. Stiegler until the day before the Spokane trial commenced, which was in the fall in 1939.

Mr. Hinckle: Is that true, Mr. Stiegler?

Mr. Abel: Mr. Stiegler testified. That was produced and it was a surprise to us when it was produced and he testified.

Mr. Hinckle: That is true, is it?

Mr. Stiegler: I couldn't hear.

Mr. Hinckle: Did you sign this agreement of August 23rd, a supplemental agreement, providing for taking care of the creditors of the Mutual Gold? Did you sign that just a day before the trial at Spokane?

Mr. Stiegler: I don't recall now just when I did sign it but——

Mr. Hinckle: About that time?

Mr. Stiegler: About that time; yes, sir.

Mr. Hinckle: Very well, I offer it on that statement. [344]

The Clerk: Exhibit J. [345]

(Testimony of Joseph A. Vance.)

DEFENDANTS' EXHIBIT J

This Agreement, made and entered into this 23rd day of August, 1939, by and between Mutual Gold Corporation, a corporation, party of the first part, Frank A. Garbutt, party of the second part, and Log Cabin Mines Company, a corporation, party of the third part, Witnesseth:

That Whereas, the parties hereto entered into a written agreement dated the 17th day of December, 1938, relative to the Log Cabin group of mines and mining claims, located near Leevining, Mono County, California, and which was held by first party under a certain contract of purchase from the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, dated July 13, 1932, and which said contract was later modified; and

Whereas, the party of the first part conveyed all of its right, title and interest in and to said contract, as modified, to the party of the third part herein, together with other claims and property owned by party of the first part; and

Whereas, as of the date of said contract, December 17, 1938, between the parties hereto, party of the first part was and still is indebted to divers and sundry persons and corporations for advances made to party of the first part, and in addition thereto had issued production notes aggregating \$31,807, and which said production notes are now outstanding; and

(Testimony of Joseph A. Vance.)

Whereas, the party of the first part is desirous of amending said contract of December 17, 1938, between the parties hereto; and

Whereas, the parties of the second and third part are willing that the same be amended in certain particulars;

Now therefore, it is mutually agreed by and between the parties hereto that said contract dated the 17th day of December, 1938, between the parties hereto, shall be amended as hereinafter set out, but that said contract shall in all other particulars stand as originally made, to-wit:

That after the full and complete payment, settlement and satisfaction of the following items, to-wit:

- (1) The entire balance unpaid upon said contract covering said Log Cabin group of mines and mining claims, between party of the first part and Chandis Securities Company, M. N. Clark and Alice Clark Ryan, dated July 13, 1932, as modified;

- (2) The payment of all sums now due and owing and which may hereafter become due and owing by the party of the third part in the course of its operations, including any sums now due and owing and which may hereafter become due and owing from the party of the third part to the party of the second part under the terms of said contract dated December 17, 1938, or otherwise; and

- (3) The setting up of sufficient working capital by the party of the third part to prop-

(Testimony of Joseph A. Vance.)

erly and efficiently conduct its business and operate said mining claims covered by said contract dated July 13, 1932, as modified, and all claims transferred and conveyed by party of the first part herein to party of the third part herein;

one-half of the net proceeds of production from said mining property, after deducting all income taxes or taxes which may become due and owing thereon to any Governmental body whatsoever, including the State of California and the United States of America, shall be paid by the party of the third part to the party of the first part, until all obligations due and owing by the party of the first part to its creditors on the 17th day of December, 1938, with accrued interest thereon, if any, together with the sum of \$10,000 advanced by the party of the second part to the party of the first part and the party of the third part for the liability of the party of the first part to the party of the third part for its subscription to the entire capital stock of the party of the third part in the sum of \$10,000, shall have first been fully paid, and, second, said production notes aggregating \$31,807 shall likewise be fully paid. As one of the considerations for permitting one-half of the said net proceeds of production of said mining property, as hereinbefore provided, to be paid by the party of the third part to the party of the first part, it is hereby agreed that the party of the second part

(Testimony of Joseph A. Vance.)

shall similarly be entitled to payment to him by the party of the third part of the remaining one-half of the net proceeds of production from said mining property, after deducting all income taxes or taxes which may become due and owing thereon to any Governmental body whatsoever, including the State of California and the United States of America, up to, but not exceeding, such amount as shall be paid hereunder by the party of the third part to the party of the first part.

That in the event of the sale or other disposition of said mining property by the party of the third part, after the payment of items numbered (1) and (2) hereinbefore set out, one-half of the remaining proceeds of the purchase price, after the deduction of all income taxes or taxes which may be due and owing thereon to any Governmental body whatsoever, including the State of California and the United States of America, and all costs of said sale, to the extent necessary to take care of, first, said obligations of the party of the first part as of December 17, 1938, with accrued interest thereon, if any, and, second, said production notes aggregating \$31,807, shall be paid by party of the third part to party of the first part, so that said obligations may be fully paid and satisfied by the party of the first part; and the remaining one-half of the proceeds of the purchase price, to an amount equal to that paid to the party of the first part by the party of the third part, shall be paid by party of the third part to the party of the second part.

(Testimony of Joseph A. Vance.)

That nothing herein contained shall be construed as limiting or modifying in any particular whatsoever any of the rights which either of the parties of the second and third part may or shall have or be entitled to pursue under said contract of December 17, 1938, by and between the parties hereto.

Anything herein to the contrary notwithstanding, it is hereby agreed that it shall be optional with the party of the third part to include the said sum of \$10,000 advanced to the party of the first part by the party of the second part for the purchase of capital stock of the party of the third part, as hereinbefore set out, as a portion of the advances to be made by the party of the second part herein under the said agreement of December 17, 1938, between the parties hereto, for the protection and development of said mining property and the property covered by said contract and for said equipment; it being the verbal understanding of the parties at the time the said advance of \$10,000 was made, that the same might be so included as a portion of said advances under said contract of December 17, 1938.

In witness whereof, the parties hereto have duly executed this instrument on the day and year in this agreement first above written.

(Seal) MUTUAL GOLD CORPORATION

By J. E. STIEGLER

President

Attest: E. T. ORR

Secretary

Party of the First Part

FRANK A. GARBUTT

Party of the Second Part

(Seal) LOG CABIN MINES COMPANY

By S. C. HALL

President

Attest: CHAS. F. HATHAWAY

Secretary

Party of the Third Part

A. R. CARTER,

called as a witness on behalf of defendant, having been previously duly sworn, was examined and testified as follows:

Q. By Mr. Hinckle: How much money, Mr. Carter, has been received from the sale of gold and silver recovered from the mine since Mr. Garbutt has been operating it?

A. \$286,962.96.

Q. What has been done with this money?

A. Well, most of it has been spent for the operations [346] of the mine. There is a small amount on hand at the present time, about \$3,000 or \$4,000.

Q. You say most of it has been spent for that. What has the rest of it been spent for?

A. With the exception of the \$3,000 or \$4,000 which is on hand at the present time.

Q. How much money has Mr. Garbutt received out of the returns from the mine, if any? [347]

A. He has not received any money. [352]

(Testimony of A. R. Carter.)

Q. By the Court: Has the Log Cabin paid any dividends? A. No, sir.

Q. Have you made up a statement showing profit and loss?

A. I made up an income tax statement to the federal government showing all the profit and losses at the end of 1940, also one at the end of 1939.

Mr. Hinckle: They are in evidence, I believe, your Honor.

A. The statements have been filed with the federal government.

Q. Then, as I understand your testimony, generally speaking, that the mine has been operated and about \$286,000 taken out of it and it has not shown any profit?

A. No; it has not, figuring depreciation and depletion.

Q. Well, you have not paid the payments to the Securities Company, either, have you?

A. They have not made the payment on the contract to purchase.

Q. Why not?

A. That I don't know. I only know from what records that I have. I don't know why it has not been. In the [354] first place, we haven't enough cash on hand to pay it. [355]

Mr. Hinckle: Is there any objection to having a total figure given as to the amount of money that Mr. Garbutt has personally advanced, inasmuch as the contract required him to advance certain moneys?

(Testimony of A. R. Carter.)

The Court: I think that is proper.

Mr. Anderson: Subject to our objection, your Honor.

The Court: And subject to your objection.

The Witness: Is that the question?

Q. By Mr. Hinckle: Just what is the total of these advances? And then that will be checked up and proved by the later accounting.

A. \$133,956.20.

Q. Does that include the \$10,000 that he loaned to Mutual Gold to buy Log Cabin's stock?

A. Yes; \$10,000 of that went to Mutual.

Q. Have you any other itemization that you can give offhand at this time?

A. The balance of it went to buy machinery and to buy supplies for the mine.

Q. How much went for machinery?

A. Do you want me to give you that in a total figure or——

A. A total figure. [359]

A. \$127,876.17.

Q. By Mr. Hinckle: That is for machinery?

A. Machinery.

Q. By Mr. Hinckle: Subject to correction of the various calculations, how much money has been paid to the owners since Mr. Garbutt has taken over the operation? A. \$23,500.

Q. Do you know how much had been paid in the six years prior to that that the contract had been in operation? A. I do not.

(Testimony of A. R. Carter.)

Q. Has Mr. Garbutt received any interest on the money he has advanced? A. He has not.

Q. Has he received any dividends of any kind?

A. He has not.

Q. Has he been paid anything for his services?
[360]

A. He has not.

Q. I believe you have already testified that the Log Cabin Mines Company, the corporation, has not made any profits out of this?

A. No; they have not made any profit. [361]

FRANK A. GARBUTT,

a defendant herein, recalled as a witness in behalf of defendants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. What was the first incident or transaction in connection with the making of the contract of September the 2nd, 1938, that you recall?

The Court: I would suggest that counsel come over closer to the witness so that both of you will not be under a constant strain.

A. Mr. Collins came to my office in Los Angeles and hung around there for about two weeks. He had access, he had entree to the office. I had known him in these transactions for six or seven years. He sought opportunity to talk to me about going into the property with them, which I declined.

(Testimony of Frank A. Garbutt.)

Finally, at his solicitations, I told him I would try to find a party for them. He was very anxious to make some kind of a contract to do what he called "getting them out of Mr. Vance's clutches," and he brought with him Mr. M. J. Keily, a former em-
[371]

ployee of mine. Mr. Keily worked for me as mining superintendent for 17 years without missing a pay day at \$300 a month and expenses; and I had a lot of confidence in Mr. Keily. When I retired from mining seven or eight years before, Mr. Keily got some mining property of his own, and at my suggestion—they asked me for a good man at some time or other—and I told them Mr. Keily might give them advisory work of some kind and they employed him at \$200 a month to work up there for them. And in that way I had some contact with the mine, which I was anxious to have on account of the owners whom I was representing.

Q. Did you make a contract at that time, or did they come back later? What was the next incident in connection with the making of that contract?

A. The next step was that I endeavored to find somebody that would be responsible and that would be willing to put some money in the property and help them carry it on.

Q. Whom did you contact?

A. I contacted Mr. Cecil B. De Mille, a former associate of mine in the motion picture business.

Q. Did you contact anybody else?

(Testimony of Frank A. Garbutt.)

A. Later on, I contacted Mr. Hal Roach, another friend. I picked them out because I thought they would have easy money.

Mr. Abel: I object to this as argument.

Q. By Mr. Hinckle: No contract was made with them, is that correct? [372]

A. I brought Mr. Keily in contact with Mr. C. B. De Mille, and he took him down on his yacht. I went with them. And they talked about the matter at some length. About that time or shortly thereafter, Mr. De Mille discovered that there was a lawsuit in the offing and he declined to discuss the matter further.

Q. Do you remember why the contract of September the 2nd—withdraw that. Did any other people come down from Seattle or up north to see you about the making of a contract before one was made?

A. Yes. Mr. Ferbert, I think Mr. Stiegler, I think Mr. Grill, in addition to Mr. Russell Collins. Mr. Russell Collins and his brother were the ones who negotiated the original contract of 1932; and I had become pretty well acquainted with them during the dealings, the subsequent dealings.

Q. Did they come down at your solicitation?

A. No.

Mr. Abel: To avoid any misapprehension, Mr. Collins' brother died several years earlier?

A. He died several years earlier, and he was the one I knew the best. I became acquainted with Mr. Russell Collins after that. But this thing started in

(Testimony of Frank A. Garbutt.)

this way: This mine belonged to a friend of mine, Mr. Harry Chandler, and another friend, Mr. Harry
[373]

Clark. It formerly belonged to an acquaintance of mine, Mr. Luther Brown. And when Mr. Clark died it left Mr. Chandler with half of this property and Mrs. Alice Clark Ryan, Mr. Clark's daughter, the owner of the other half; and they asked me, or Mr. Chandler did, if I would undertake——

I undertook the sale of it for them, without any recompense to me, and I submitted the property or showed it to people and tried to sell it over a considerable period of time. Three or four other concerns, whose names I forget—one was United Verdi Consolidated—and they made an examination of it and they would not pay anything for it.

Now, my theory of selling a mine, your Honor——
[374]

The Court: Let us not go into that, Mr. Garbutt, your theory of selling a mine.

Q. By the Court: When it was sold had there been any development work done?

A. Yes. The best ore in the property had been developed by the Simpson brothers and Mr. Clark. That was on the 125 level. One of the conditions of this contract was that they should not mine that ore; that they should keep it preserved and intact so it could be shown—it was the show window of the mine—until they got some other ore.

Mr. Anderson: May I ask what contract that was? You said "this contract".

(Testimony of Frank A. Garbutt.)

A. That is the contract of '32, I believe. And I wrote that contract and put those provisions in there; and my reason was I didn't want— [375]

Q. By Mr. Hinckle: After the second trip down, or the trip that you have just described which was attended by or which was made by Mr. Stiegler and others, was your contract then made?

A. Yes; we made the contract of September 2nd after some negotiations.

Q. Why then was another one executed on September 22nd, if you know?

A. I don't know that I know the reason that was executed. It was apparently identical. I think it had something to do with authority of the Mutual [376]

to sign it, but I am not certain as to that. I have no independent recollection.

Q. About the time the first contract was signed or a little before, a few days before that, a notice of cancellation or termination was given by you, as agent for the owners, was it not? A. Yes.

Q. Why was that given?

A. I had just become aware of the fact that the Mutual had allowed this 125-foot level, which was the best level on the mine—was and is—had been allowed to cave. Their contract called for it to be completely protected at all times and kept accessible. I had just learned that had been allowed to cave and was inaccessible and would cost as much again or more than it did originally. It was brought to my attention rather forcibly that they had not

(Testimony of Frank A. Garbutt.)

impounded the tailings, as had been agreed, but had run some \$6,000 or \$7,000 worth of tailings out on the hillside where they had become a liability, washed down on Mrs. Cunningham, the keeper of Tioga Lodge, and that she had some claims against them for damages. The tailings were lost or wasted. And there were several other important breaches of contract that ought to be cured. And in writing that notice, in sending that notice, I had in mind bringing them in and having them agree to cure those defaults and see that they did so. [377]

Q. Did you open up the tunnel which had caved after you took charge?

A. We did later on, most of it. Not all of it is opened yet.

Q. Was that an expensive proceeding?

A. Very expensive. It cost more than the original driving of the drift. That is one of the reasons for the showing that we made.

Q. Why did you withdraw from the contract, the September contract?

A. Well, there was several reasons.

Q. Well, name them. Name those that you recall, if you will, please.

A. Well, one reason was wholly personal. My tax adviser, Mr. Mark Mitchell, went over the contract with me in connection with some income tax matters; and he advised me that, while probably it would take no tax, it was a question and a rather close one. And he said, "That contract may cost

(Testimony of Frank A. Garbutt.)

you a very severe income tax and I advise that you withdraw from it." I explained the importance of it, or lack of importance; and that was one reason. Another reason was, at the time that I made this contract I had seen the mine for two or three hours only. I was familiar with the difficulties they had had with Mrs. Cunningham over their tailings and had seen the tailings on the side hill where they

[378]

had been scattered, and I thought that liability was so—not only on anybody who made a contract, but also upon the owners if they got possession of the property back—and I told Mutual during our negotiations that I would not touch those tailings with a ten-foot pole; and that the only way I would go into the thing at all would be if they retained the tailings, retained ownership of them and retained their control of the surface of the ground on which they were; and that was left out of the contract. On the other hand, Mr. Collins had an idea that all of those tailings would go down on Mrs. Cunningham the next year and cause very serious damage which might run into a good many thousand dollars. I didn't think so, but they wanted to protect the Mutual against that liability, and a part of the expense that I had to go to was to furnish the money to build an eight-inch line two or three miles down to a small tailings dump they had, so that when the spring run-off came they could move those tailings. I agreed with Mutual that I would help them out

(Testimony of Frank A. Garbutt.)

with those tailings all that I could, without having any liability or any duty to do so, and we arranged that I should advance that money to such men as Mr. Collins wanted to use up there for that purpose, but on the Mutual payroll and not on mine. This was when I was operating the thing myself under a contract with me; but that he should do those things if he wanted to, but that I would not. I employed Mr. Collins because the Mutual wanted [379]

a representative on the ground. He had been director or was at that time a director of the company, and I agreed to employ him and pay him at the expense of the operating company or of myself, but that he should report direct to the Mutual so that they would have full information of whatever was being done.

Now, I wrote a letter—this situation became acute, and I wrote a letter to Mr. Collins, to Mr. Haley and to Mr. Sturgeon, Haley being their mill man and Sturgeon being their underground foreman, giving them positive orders that they were not to touch those tailings; they were then on my payroll and working for me, and they were not to touch those tailings; and I asked them to send me back an acknowledgment of the receipt of that letter, that they understood it and would obey the orders. Instead of doing that, I am told by Mr. Collins—

Mr. Anderson: I object to that—

A. By Mr. Collins that they held a meeting and

(Testimony of Frank A. Garbutt.)

decided they would not obey that order. I didn't learn that until eight or ten days later, when Mr. Collins came into my office unexpectedly. At that time I knew if they disobeyed that order they would make me liable on my payroll; so I discharged Mr. Collins and I wrote a letter immediately—a letter, or a wire I guess it was—to Haley and Sturgeon, saying, "Please sign the acknowledgment of that letter and send it to me by return mail," which was done. Now, Mr. Collins could do whatever he pleased as representative of the Mutual, but I wanted him

[380]

to do nothing with those tailings as my representative or as my employe, and I wanted the other men exactly the same way; and that is the time when I withdrew from the contract, but my real reason, the underlying reason, was the effect it might have on my income taxes.

Q. By Mr. Hinckle: Mr. Garbutt, did you pay any money to Mr. Collins to get him to work for you in order to obtain this contract of September?

A. No.

Q. Did you pay any money to anybody else for that purpose?

A. No.

Q. Did you want the contract?

A. No, sir.

Q. Why did you enter into it?

A. Well, by that time I saw or thought I saw

[381]

that the Mutual was in rather bad shape. I felt very friendly to Mr. Collins and had started to get

(Testimony of Frank A. Garbutt.)

them a party interested. At that time, why, Mr. Abel was threatening suit or trying to bluff me, and I made up my mind that I would see him through and do the best I could to save—he had some 700 stockholders that Mr. Collins had gotten a great many of them; they were small stockholders; they were broke; and I wanted to help them out. I thought I could do it and keep even, perhaps, until I could get some person in my place. I never intended to get the contract, never would have done it had it been free. I thought I could enlist someone else on my terms and withdraw. That was my intention always.

Q. The notice of forfeiture was withdrawn October 15th. Why was that withdrawn?

A. Well, that was withdrawn because the owners became assured that a contract had been made which would cure those defaults and would protect the property. [382]

Q. The contract of December 17, 1938, was made [383] here in Los Angeles, or was it made in Seattle or where was it made?

A. I think it was agreed on here in Los Angeles.

Q. Who drew the contract, if you know?

A. Mr. Grill: I have to explain there and get the continuity of this thing. I am sure I will have to, if your Honor will bear with me just a moment or two.

The Court: Let him explain.

Mr. Hinckle: All right. Subject to——

(Testimony of Frank A. Garbutt.)

A. When I withdrew I agreed with Mr. Grill and the other directors of the Mutual that I would keep on furnishing money and allow them to carry on until they could find a person to take my place. It was the only thing they really could do. The thing was in operation when I withdrew, and the only fair thing I could do. So then they kept after me to make another contract, which I didn't want to make, and Mr. Grill drew that contract, negotiated it, I think, with some of the other directors, and finally that contract was signed for that reason.

Q. By Mr. Abel: Which contract are you speaking of?

A. I am speaking now of the contract of December 17th.

Q. By the Court: Do you know when you signed that? A. Sir?

Q. Do you know when you signed it?

A. On or about December 17th. It was dated—this was written by Mr. Grill, dated, I believe, by him in his [384] handwriting, and sent to me in due course.

Q. It was dated when you received it?

A. I think so. I am not certain of that, your Honor.

Q. You do not know the date, though that you actually signed it?

A. I don't know the exact date. It probably was a day or two later. I am not certain.

(Testimony of Frank A. Garbutt.)

Q. By Mr. Hinckle: Did you fill in that at the top? A. No.

Q. "December 17"?

A. That was filled in in Mr. Grill's handwriting, I believe.

Q. The minutes introduced of the Log Cabin Mines Company, introduced in evidence by the plaintiffs, show that the Log Cabin board of directors authorized the signing of that contract on January the 4th. Did you sign it after the Log Cabin signed it or before?

A. Before, I am sure. In regard to that matter, Mr. Hinckle, all those things were referred to you and I very seldom looked at them.

Q. Do you know when you transmitted the contract to him? I will withdraw that. After the contract was executed by you and the Log Cabin did you transmit it, or at least a copy of it, to Mutual or to some one for the Mutual?

A. My recollection is—and I am not certain of it— [385] that we had a contract drawn by Mr. Grill that was very much interlined or mutilated and that that was signed, and that afterwards he prepared these clean copies and sent them down for signature, but I am not certain of that. That is my recollection.

Q. When the clean copy was signed which the Judge put in evidence, or asked to have introduced in evidence this morning, did you transmit a copy of that to the Mutual or to someone for the Mutual?

(Testimony of Frank A. Garbutt.)

A. I think so.

Q. And do you remember how you transmitted it? A. Well, it would be by letter.

Q. I will show you here a carbon copy of a letter dated "January 12, 1939," addressed to "Mr. Wm. L. Grill, Air Mail", and signed "Frank A. Garbutt", and ask you if that is a copy of a letter that you sent with the executed final copy to the Mutual. A. Yes.

Mr. Hinckle: I offer that in evidence as Defendants' next exhibit.

Mr. Abel: I have no objection to its being a copy, if I might see it, about its being a copy, if I may see it. No objection.

The Clerk: Exhibit L.

DEFENDANTS' EXHIBIT L

January 12, 1939.

Mr. Wm L. Grill,
Colman Building,
Seattle, Wash.

Air Mail

Dear Mr. Grill:

I am enclosing you herewith two additional original copies of the agreement of December 17th, one of which has been executed by the Log Cabin Mines Company and by me. It should be executed also by

(Testimony of Frank A. Garbutt.)

the Mutual Gold Corporation, after which you are at liberty to keep it for your purposes, the same as the copy you already have.

The other copy I would like to have executed by the Mutual Gold Corporation and returned to me for my files, one of the two copies I will then have being for delivery to the Log Cabin Mines Company.

With kind regards, I am

Yours sincerely,

FRANK A. GARBUTT.

FAG-C.

Enc.

The Court: Defendants' next in order.

Q. By Mr. Hinckle: What equipment have you placed on [386] the property since you have been there?

A. In a general way, a Marcy bail mill, a Doer classifier, Clark-Todd amalgamator.

The Reporter: Will you repeat the last, please?

A. Clark-Todd amalgamator. That is the amalgamator that they use at the Homestake Mining Company.

Q. By the Court: What is the trouble with that mine up there? With that amount of money taken out, why have there been no profits?

A. It is not the amount of money they take out, your Honor. It is what it costs you.

(Testimony of Frank A. Garbutt.)

The Court: I know, but what is the trouble?

A. Well, low-grade ore and difficulties of various kinds. For example, we had the money accumulated to make this payment on November 1st; and I had told the owners that it would be forthcoming, when the mine commenced to fall in on us due to water that had seeped into the property, into the formation, from the previous spring thaw when the snow thawed and the ground was not frozen. It didn't make its effect manifest for some months afterwards; and we had to use all the money we had and all the men we could get to save the property from becoming practically a total loss; and that money was used up for that purpose and additional money borrowed to timber and pay for our winter supplies. [387]

The date of the caves ran over a period of weeks, I think, a month or two. It was in the late fall of 1940 and it was pretty general all over the mine. [388]

Q. By Mr. Hinckle: Did you hire any extra men to take care of this caving-in situation?

A. We turned all our crew into that and hired a few, all that there was a place for to work.

Q. You had to temporarily stop mining for the production of ore?

A. It interfered with it very much. We did not stop entirely. We kept going as best we could.

Q. By the Court: How much ore are you putting through the mill now?

(Testimony of Frank A. Garbutt.)

A. That depends, your Honor. We have had during the winter time snow there as deep as 20 feet, sometimes covering our building. We aim to put through 100 to 110 tons when we can get it, and we come as near that as we [389] possibly can. This mine was mined by the Simpson boys, then by Mr. Chandler and Mr. Clark, then by the Mutual, and between them they spent there \$300,000 or more. This \$300,000 was their last attempt with that old mill that did not even comply with the terms of the contract that they build a proper mill to mill the ore. The expenses of milling with that mill ran about \$8.50 a ton.

Q. By the Court: May I ask what is the prospect in the future for that mine?

A. Not too good. It has some possibilities. I can give you all that in detail, with exact data. And in that information that Mr. Abel didn't want me to read yesterday you will find, I think, exact figures that will answer most of those questions; and they are not based on opinions or hearsay; they are based on actual money figures.

Q. By the Court: You have been operating it—— [390]

A. About two years, I guess.

Q. —about two years, and it has not shown any net profit?

A. Well, according to the income tax statements. According to my ideas, it would show some profit, a small profit, and it should have shown a little bit

(Testimony of Frank A. Garbutt.)

more; but the regulations are such that you have to charge to capital charges things which are necessary for the operation and which really have no capital value of any kind; and that would explain a little of it. I know the detail of the operation.

Q. Supposing you have another two years' operation, are you going to be any better off than in the last two years?

A. I can't tell you that. I can explain to you the reasons that bear on it, but I can't answer that question or nobody else.

Q. Has the ore held up in value?

A. No. In fact, the ore never did have the value that this—what's the name?—Cole's report indicated, neither the value nor the quantity. [391]

Q. By Mr. Hinckle: What are the ore values that you have been taking out?

A. They have run along in the neighborhood of on an average of \$5.40 or thereabouts.

Q. And what is about your average cost of recovering those values?

A. If you leave out the bad luck we have had and things of that kind, I would say that I ought to mine and mill it and handle it, all told, for about \$3.75; but it has been costing us a little more than that, sometimes more than \$4 and sometimes quite a little bit more than \$4. [393]

Q. What is your estimate of the number of tons of available ore in the mine now?

(Testimony of Frank A. Garbutt.)

A. Well, I have no estimate of what there is now. I know what there was at the time I took charge of it.

Q. All right. What is your estimate at that time?

A. There was about sixty-four or five thousand tons of ore in the mine; but that should not be characterized as ore that was blocked out because none of it was, strictly [404] speaking, blocked out.

[405]

Q. By Mr. Hinckle: How much of an error do you say that Mr. Cole had on his valuation of a million six hundred and some thousand?

A. Well, I would think there would be in there at that time about not to exceed \$400,0000 gross * * *.

Q. What percentage of recovery do you make with your new mill?

A. Well, our recovery has varied from 65 to as high as about 80 per cent by amalgamation.

Q. By Mr. Hinckle: You do not use any other kind of recovery? A. No. [426]

Q. By the Court: You did not put in a cyanide plant?

A. No, sir. I would like to go into the reasons of that if I may.

The Court: I am not concerned.

Q. By Mr. Hinckle: I will ask you why you did not. Why didn't you put in a cyanide plant?

A. Because after figuring it from every angle,

(Testimony of Frank A. Garbutt.)

testing it for a good many months in connection with the Dorr Company, the biggest authorities on cyanide and the biggest manufacturers of cyanide machinery in the world, we came to the conclusion that it would not pay with the ore we had in sight; and we were on a ridge that was directly between two streams used for drinking water, one a city and one a resort, and there was a great many uncertainties and expenses in taking care of that cyanide, and it would not pay. The cyanide process, you can save anything you want up to about 99 per cent, and that dependent upon the excellence of your plant and the completion of it; but a cyanide plant such as this mill and mine should have and be adapted to the milling of this ore, would cost, if properly installed, about \$125,000 for the cyanide plant alone, not including the other milling machinery, which would be your crushing and grinding machinery and the items that go with it. [427]

Q. By Mr. Hinckle: In your opinion, is your new mill now an efficient mill?

A. Yes; it is an efficient mill in so far as our present operations are concerned and in so far as amalgamation is concerned. We would undoubtedly save a materially larger amount of gold by cyanide, which is an ideal process for this ore; but it would cost us, including the depreciation charges and the tax and insurance on the mill, about as much as it would come to; and when we got through with the ore that we now have available we would not

(Testimony of Frank A. Garbutt.)

have the mill paid for and would be still more hopelessly in debt.

Q. Mr. Garbutt, your contract of November the 1st, 1938, terminating your September contract, I believe [428] provided that you could take a first lien on the property to secure your advances. Have you done that?

A. I didn't think it had it and I have never thought of it since.

Q. It also provides, I believe, that you had the right to have the 4,099 shares of the Log Cabin stock pledged to you to secure your advances. Has that been done? A. No; that was never done.

Q. Where is the stock now?

A. Well, I don't know. You put it away somewhere. I think it is in escrow with the Citizens Bank under order of the State Corporation Commissioner.

Q. That same contract, as I recall it, provides that you should take demand notes. Have you ever taken any demand notes?

A. No. That provision was made because the company was scared to death of some Vance suits and was to enable me to protect myself in the event he started to foreclose. I never took it and never had any idea of taking it.

Q. Did you assign whatever interest you had in the mines, as trustee or otherwise, to the Log Cabin Mines Company?

(Testimony of Frank A. Garbutt.)

A. Yes; on direction of the Mutual——

Mr. Abel: I object to this as not responsive.

Q. By Mr. Hinckle: Is this the assignment that you executed? [429]

A. I have never seen it since. Yes.

Mr. Hinckle: I offer that at this time as defendants' exhibit.

Mr. Abel: What date was that?

Mr. Hinckle: March the 10th, 1939.

The Clerk: Exhibit O.

Mr. Abel: What exhibit?

The Clerk: Exhibit O.

DEFENDANTS' EXHIBIT O
ASSIGNMENT OF CONTRACT

For value received, I hereby sell, assign, transfer, set over, and convey to Log Cabin Mines Company, a California corporation, all my right, title, and interest in and to that certain contract dated July 13, 1932 between Chandis Securities Company, M. N. Clark, and Alice Clark Ryan, as sellers, and Russell F. Collins and Ben L. Collins, as buyers, together with all modifications and agreements supplemental thereto.

In witness whereof I have set my hand hereunto on this tenth day of March, 1939.

FRANK A GARBUTT

Witness.

(Testimony of Frank A. Garbutt.)

Q. By Mr. Hinckle: Do you represent the owners as an agent now? A. No, sir.

Q. When did you cease to represent them as an agent?

A. I think it was about November 3rd, two or three days after this contract was made of November 1st. I am sure of that.

Q. You have not represented them since that time, have you? A. No, sir.

Q. How much time, about, have you put in of your own on this enterprise?

A. That is a headache. About four or five hours a day, sometimes more.

Q. Have you made any charge for that service?

A. No.

Q. Are you willing at this time to turn the property back on certain conditions? [430]

A. I always was. I am now; yes.

Q. What are the conditions that you are willing to turn it back to them on?

A. The conditions are and were that it would go into somebody's hands who would make a bargain that would protect the Mutual stockholders, and especially the minority stockholders, and that would be satisfactory to the owners.

Q. What about the money you have put into it?

A. Well, at one time they suggested—Mr. Abel suggested——

Mr. Abel: Just a minute. That is not responsive.

(Testimony of Frank A. Garbutt.)

The Court: That is not the question he asked. Just read the question, Mr. Reporter.

(Question read by the reporter.)

Q. By Mr. Hinckle: I mean by that, what condition would you make as to the money you had put into it?

A. Pay it to me back in any reasonable way.

Q. You would not want it all cash?

A. Oh, no.

Q. How much cash would you ask?

A. I would say about half and the balance distributed over some reasonable time. [431]

Cross Examination

Q. By Mr. Grill: Mr. Garbutt, what has been done with the tailings from the mill from your operations?

A. The tailings from my operation have been pumped through a series of four Woolfley sand pumps from the mill to a point up on top of the hill where they can be impounded and stored with some reasonable degree of safety, and not exposed on the sidehill where they are subject to a cloud-[432] burst.

Q. Can they be reworked or reused at some future date? A. Oh, yes.

Q. They are impounded and can be used?

A. Yes; if ever you got enough of them there to pay, or to figure out an operation that would pay. They are available and the only additional cost

(Testimony of Frank A. Garbutt.)

would be—they had to be pumped, in any event—the only additional cost of working them would be the cost of scraping them up, which would be something less than 10 cents a ton. [433]

Q. Did you make a return to Mutual Gold of your operations up to date of termination of the contract? A. What do you mean by a return?

Q. Make any statement or report of this property?

A. I reported to them at all times about all of my operations.

Q. But there was no terminal date October 31st. Did you make any statement of account up to that date?

A. Whatever statements they wanted I sent them, almost daily copies of our routine correspondence. [442]

Q. How much had you expended up to that time? A. I don't know.

Q. Well, concerning the initial outlay of \$500 for the power line, what date did you put that money up?

A. It was some time before the contract was signed. In discussion with them they decided——

Q. Well, what time? How many days before?

A. Oh, I would imagine a couple of weeks. I don't know. I can tell you the reason of it without——

Q. Well, the contract was signed on September 2nd?

(Testimony of Frank A. Garbutt.)

A. Yes. This was some time previous to that time.

Q. Say, about two weeks before?

A. Well, it might have been a month before. I don't know. [443]

Q. By Mr. Abel: Mr. Garbutt, do you testify that the Log Cabin Mines Company has milled 50,000 tons of ore from [444] this mine?

A. In that neighborhood, I think. It may be that is the amount in toto—I don't know—from the start.

Q. And you estimate that there remains developed, but not blocked out, about 60,000 tons?

A. No. What I said was that there was about 63,000 or 64,000 tons there of probable ore at the time that I took over.

Q. Have you had any estimate or survey made to determine the amount of probable ore with reference to this trial?

A. You mean that there is now?

Q. Or within some near date?

A. I don't think that anybody could estimate that. [445]

Q. When was it that you noticed the cave-in on the 125-foot level?

A. The first time I tried to go into it.

Q. Was that ever opened up?

A. I opened up quite a bit of it; yes, most of it.

[447]

(Testimony of Frank A. Garbutt.)

Q. Are you in a position to state what the cost of removing or avoidance of the cave-in on the 125-foot level was; I mean the cave-in that you say existed on and before September 2, 1938?

A. It would take a lot figuring to get the exact cost on that. [448]

Q. Who did it?

A. We contracted a little of it there, contracted the labor; and that labor contract cost—done by a man named Armstrong, he is a miner I happened to know—his labor contract on that, I think, was about three and a half dollars a foot for the labor; and they used a lot of timber. It was not less than that.

Q. By the Court: Was this ore that they caved in, that you could mill it?

A. No; most of it was muck that you would get nothing from the muck. The ore had been taken out when the drift was originally run, your Honor, and gone to the mill. In cleaning up you would sometimes get some ore.

Q. By Mr. Abel: Since you took over the operation of this property there has been a very serious cave-in, has there not? A. Yes.

Q. On what level?

A. On 125, on No. 2 and No. 3 and No. 4. [449]

Q. I want to call your attention to Plaintiffs' Exhibit 91 and the second letter. Is that a copy of a letter sent by you? A. Evidently.

(Testimony of Frank A. Garbutt.)

Q. To Mr. Grill? A. Evidently; yes.

Q. And that letter was the first time that you had up with Mr. Grill the bringing of the quiet title suit in the State of California?

A. I would think so. You see, you brought one quiet title suit up there and I thought if it was wise in you it would not be foolish in us, if we were going to spend some money to quiet title. [450]

Q. Why do you say you did not follow up your contract rights and ask for a lien for your——

A. I didn't say it.

Q. ——for your expenditures?

A. I didn't say it.

Q. What was the reason that you did not take notes and did not assert a lien?

A. I didn't think it was material in any way and I have no idea of ever trying to enforce it. I didn't care if I had it or not. Those were proposed and arranged so as to protect the company against Mr. Vance and against you. I had no idea that I would ever enforce them. [454]

Q. You did, then, operate the mill personally in 1938, did you not?

A. I never did any personal work on it more than helping them clean up sometimes; but it was under my charge; [455] yes, sir.

Q. But wasn't it more than that after the December 17th contract went into force? And what day did that go into force?

(Testimony of Frank A. Garbutt.)

A. My recollection is and my understanding is December 17th. We commenced operating under that as of that date.

Q. And when did you commence actual operation under that contract, you, personally, as one of the parties to the contract, not Log Cabin Mines?

A. Well, I don't think I ever operated personally under that contract. I thought that operation was under the Log Cabin Mines.

Q. Even before it had any capital stock?

A. Well, it was effective as of that date.

Q. As of what date? A. December 17th.

Q. The subscription to the capital stock of Log Cabin Mines by Mutual was on what date?

A. I don't know.

Q. Was the mill and mine in operation before that date? A. Very probably.

Q. Well, it was in fact, was it not?

A. I imagine so.

Q. What time in January—can you tell from your records there what time in January the mill was put in [456] operation?

A. I can tell what time it was operating from these records; yes.

Q. Well, tell us.

A. Do you want to know what time in January it operated?

Q. Yes. A. What year?

Q. 1938.

(Testimony of Frank A. Garbutt.)

The Court: 1939.

Mr. Abel: '39.

A. Whichever year you want. You see, it made no difference who it was operated by.

Q. Never mind.

A. You want January, 1939?

Q. No. I want the date that the mill started to operate after the contract of September 17, 1938.

A. Then I have got to go back prior to that time and tell you when it was operating. Do you want 1938?

Q. I want the time that the mill started after December 17, 1938.

Q. By the Court: When did it first start operating after December 17, 1938?

A. All right. The first operation—I am confused in that question again. Will you give me that date again?

The Court: He asked you the question: When did you [457] first operate the mine after December 17th, 1938.

A. I have got to find December, 1938, and go on from there.

Mr. Abel: May we have the pay roll for January. '39?

Mr. Hinckle: We haven't it here.

A. We were not operating in December, '38.

Q. By the Court: When did you operate in January, then?

(Testimony of Frank A. Garbutt.)

A. The first operations under my charge was on January, 1939.

Q. What day?

A. They commenced on January 2nd.

Q. By Mr. Abel: And did you continuously operate from that day on?

A. As much as we could, as well as we could; yes.

Q. What interruptions were there?

A. Oh, just breakdowns of the old mill, sometimes a little lack of ore.

Q. The mine was in operation, was it not?

A. Not when the mill was not.

Q. You did not accumulate ore?

A. You couldn't. You had no place to put it. Fill the bins and you were done, a couple of days' run or a day's run. [458]

Q. Outside of the mint returns is there anything available in the way of data from which that has been prepared?

A. Well, you haven't the daily records here, the daily reports, rather, of the amount of ore milled; but the dates of that stuff you get off the mint returns.

Q. That would depend upon when you send the——

A. The bulk of this, of course, is my own computations to get these various results. The mill was run as continuously as it could be run from January

(Testimony of Frank A. Garbutt.)

2nd, when it started up, to the date it was shut down, to about five or six days prior to the starting up of the new mill. No distinction made in these records of the mine as to whether I was operating it, the Mutual, or the Log Cabin or who, the trustee or otherwise. It was operated. I think, in four different ways during that period. [459]

Q. Have you your income tax return for the period while you were operating it in the fourth way, as trustee?

A. I think the income tax records probably all went in together. I don't know. I didn't make them. I didn't see them. But it was operated on the start by me, and then it was operated for a short period of time as trustee for the Mutual while they were deciding what they wanted to do; then it was operated by the Log Cabin. In other words, as trustee, I was operating really under the name of Mutual, not as trustee by me and not as trustee.

Q. The four capacities, then, were you personally, you as trustee, Mutual Gold, and Log Cabin?

A. Well, I imagine that there was no operations carried on by me as trustee. I held the property in my name as trustee, but I think I operated it for the Mutual Gold. I don't think it was operated by me as trustee.

Q. Well, what, then, did you refer to as the four capacities in which you ran the property?

A. Well, that was just a mistake of mine. I just didn't take time to recollect what was done.

(Testimony of Frank A. Garbutt.)

Q. Have you a segregation of your operating costs in whichever capacity you operated?

A. No. They run along from day to day just the same.

Q. Run along together? A. Yes.

Q. And you spent money as you pleased, did you not? [460] A. Not as I pleased; no.

Q. As you decided?

A. I spent it according to my best judgment, after deciding with the Mutual and with ourselves, each, what we should do, what our operations should be.

Q. Well, when did you meet with Mutual on that subject?

A. Our business was mostly transacted by correspondence. I would write them in regard to my general plans or we would discuss it when we did meet, and then operate according to that program.

Q. The income tax returns, the federal income tax returns were all lumped together in whichever capacity?

A. I don't know. Mr. Carter made those. He knew the operations.

Q. Well, you swore to them, did you not?

A. Sir?

Q. You swore to them, did you not?

A. Well, whatever I swore to there I examined at the time and became familiar with it at the time.

Q. Just examine these two returns which have been produced by Mr. Carter or by your attorney.

(Testimony of Frank A. Garbutt.)

A. What will I see about them?

Q. I want to know whether all the operations, whether loss or profit, is expressed in those two returns for the period of 1939 and 1940.

A. I imagine so. It was all a part of one operation. [461]

Mr. Abel: We offer each of these copies in evidence.

Mr. Hinckle: No objection.

The Court: Give them separate numbers.

Mr. Abel: The 1939 we offer as——

The Clerk: Exhibit 92.

Mr. Abel: ——Exhibit 92; and for the year 1940 as Exhibit 93.

A. I would say this, though, Mr. Abel, that those income tax reports would not give a correct picture of a profit or loss, for this reason: That under the government regulations you have to charge a great many things to capital accounts that have no value as a capital account, therefore, it shows you a fictitiously large profit.

Q. Did you send Mr. Keily to Seattle about the 15th or 16th of August, 1938?

A. No; I don't think so. He went there about that time.

Q. He had been an intimate associate and employee of yours for many years prior to that time?

A. I think about 17 years, about 5 or 6 years previous to that time. I knew him well. When he died a short time ago he made me his heir in fact.

(Testimony of Frank A. Garbutt.)

Q. And you furnished him the money for him to make that trip?

A. I don't think so. He got a wire from up there to come up. I think it was on a Sunday, and he didn't know [462] if he could go or not. He finally decided he would. He had a short time to make the train and I drove downtown and bought a ticket for him which I gave him. I think he paid me for the ticket.

Q. And that was entered up and mentioned in your deposition, was it not?

A. I don't recall.

Q. Some \$68? A. I don't recall.

Q. He went up as whose representative?

A. I don't know. He didn't go up as mine. He went up at the request of somebody that wired for him up there. I don't know. I imagine Log Cabin that he worked for—I mean Mutual.

Q. On his return he reported to you, did he not?

A. He didn't make any report to me; no. I talked to him.

Q. About the purposes of his trip?

A. Oh, I imagine he told me what happened. I was not especially interested in his purposes.

Q. Were you contemplating issuing the notice of rescission which was issued on August 25th at that time?

A. It had nothing to do with it, as I explained to you in much detail.

(Testimony of Frank A. Garbutt.)

Q. Were you contemplating the issuing of a notice of rescission at that time? [463]

A. I don't know. I have no independent recollection on it. I issued that when I found out——

Q. You furnished the ticket, then, to Keily?

A. I bought it for him.

Q. You saw him to the train?

A. What is it?

Q. You saw him to the train, you say?

A. No; I did not.

Q. But he came back and talked to you about his trip?

A. When he came back he probably talked to me, but I have no independent recollection about it.

Q. And did you know that he had talked with two of the directors of Mutual Gold on that occasion?

A. On what occasion?

Q. On the occasion of his trip?

A. You mean up there or down here?

Q. Up there?

A. I don't know who he talked to up there.

Q. You knew that there had been a meeting on August 13th at which the De Mille proposal was put in?

A. I probably knew all about it at the time.

Q. You drafted the De Mille proposal?

A. What is it?

Q. You drafted the De Mille proposal?

A. Yes. I probably had some assistance in it, but I think I drafted it. [464]

(Testimony of Frank A. Garbutt.)

The Court: Any further questions? I would like to ask the witness a question.

Q. What experience in mining did you have prior to this experience, Mr. Garbutt?

A. Well, my first experience in mining occurred at Solano, California. Above Boulder, at the tender age of 7 years. I lost \$20,000 at that time that I didn't know anything about. My father was a mining engineer and came here from Canada when 16 years of age with \$4 and went through Harvard College. He taught me what I know about mining. He was a mining engineer. I had various experiences then, commencing in Leadville, Colorado, in 1879 and '80 prior to the railroad there. I worked at a mine shortly thereafter at Redcliff. My father built a smelter both at Redcliff and at Leadville.

Then my next experience in mining—well, I had a little experience around Blackhawk. That is near the Golden School of Mines, the Colorado State School of Mines now in Colorado.

I came here in 1882 and worked in San Bernardino County at one or two properties there.

Q. What properties?

A. I don't remember one of them. The Side-winder was one that belonged to my father and Charley Canfield.

Q. In Victorville? [465]

A. It was in Victor. It was not Victorville. At the Oro Grande I did a little work, not much, At a mine called the Alturas Mine—that is above San

(Testimony of Frank A. Garbutt.)

Bernardino—I made some examinations there for Judge Otis of San Bernardino, but not directly for him. Mr. Ryan, who owned an interest in the mine, through a friend of mine got me to go up there and test a mill they had and make them a report on the property. I worked in San Diego County at the mines in an early day. I beat a drill underground. The last time I did underground work was beating a drill in the Mentone water tunnels above Mentone there, above Redlands there. That is the last mining that I did underground. I went from there to Canada, took charge of a gold mill. I had worked in a couple of gold mills in the meantime, and ran that gold mill there as superintendent until I milled up their ore; and then when I came back to California I engaged in general mining. Let's see—no. I went from there to New Mexico. I was mechanic in charge of the erection of the Bucyrus Steam Shovel & Dredge Company plant on the Chama River; and then I had a general mining experience a little in Lower California, some in San Diego County, some in Riverside County. I had some mining experience in Utah and in Arizona.

I then dealt in mines, that is, I bought them and spoiled them and gave them away, and worked for others when I had commissions to work, examinations and things of that kind, and engaged in min-

[466]

ing until about 9 or 10 years ago, when I retired from mining until I got towed into this by my sym-

(Testimony of Frank A. Garbutt.)

pathies for Mr. Collins and his stockholders.

I have had a general experience in mining in building and operating plants and in engineering work and in metallurgical work. And I was educated as a geologist. For a number of years I had charge of the Union Oil Company's field and land development work. I have some mines out in Utah now. They are, however, not gold. Most of my mining was gold mining. I had a little experience in silver and lead, and a little in iron properties, but not much. The last two or three years I have owned and operated, or helped to operate some vanadium properties, and have made a good many metallurgical tests on those.

I was assistant assayer in the old Elgin smelter in Leadville, built by my father, and I have done assaying in mines, and that is about the extent of my experience. The last mine I owned out in Arizona I sold about, I think about 12 years ago. I had gold mines out there. While they did not amount to very much, one of them was the old Schuylkill-Tennessee. I got into that by having a mortgage on it and I sold out about 12 or 14 years ago. And I sold the old Signal Mine. That is the mine that Dick Gird won from—not Dick Gird, but Ed Scheffelin, who discovered Tombstone—and Dick Gird, his partner, the Chino Ranch was named after, was a friend of the family, and I had some [467] mining relations and actual mining in that way.

(Testimony of Frank A. Garbutt.)

Q. In other words, you have spent your whole lifetime virtually in the mining game?

A. I have been in so many different ones at the same time that you couldn't say my whole lifetime; but I have spent my whole lifetime at mining or interested in mining. I have mined in Northern California, up above Grass Valley there, when I first studied mining engineering. The North Star and the Empire mines in Grass Valley were the deepest mines in the world, 750 feet deep about 50 years ago. I went underground in them about 7,000 feet with the general manager, Mr. Star. I went back there a few years ago when I went into this thing to brush up and met a Mr. Nob, who was assistant superintendent when I was there before, and he remembered me and showed me every courtesy, took me through his mill; and since I have entered into this enterprise I have rubbed up on the old books and on the modern books on mining and metallurgy. I have visited a number of mills to see what was being done and I am acquainted and familiar with the leading people in mining, such as the Dorr people and the American-Cyanamid people, who made tests for us at this mine. So I have made very thorough tests on this, and I have had my head chemist work on this property here six or eight months, making amalgamation tests and cyanide tests in connection with Mr. Kivari who is the coast representative of the Dorr Company [468] here. I

(Testimony of Frank A. Garbutt.)

have read all the modern works since that time and reviewed my geology, for whatever it may be worth, since that time. I have put in a lot of work in order to qualify me to know what was being done and what was the modern practice here, both in the United States, Canada and South Africa. Mr. Charles Butters, who went to South Africa with John Hays Hammond and came back here with, I think, \$15,000,000, formerly worked for my father as assayer—I knew him at the time—for \$75 a month. My father said, “He will go a long ways; he is a plugger and he is honest.” I think my father——

The Court: I think that covers the point.

A. I have worked underground. There isn't anything about this mine that I can't do as well, except for my age. And stamp mills, I know stamp mills by heart. I can play a tune on that thing. I can cock one eye on the ore bin and tell you whether the ore will run until morning.

Redirect Examination [469]

Q. ——December the 10th, 1938, signed “Mutual Gold Corporation,” and ask you if you received that through the mail also?

A. I would like to look at that other one a second time. Yes; this is one that I received in due course. I would like to explain, if I may. This is outside. I guess it is nothing. The reason of our

(Testimony of Frank A. Garbutt.)

haste for building that highline, that power line, if they didn't get started that year they were done. And a few days, which I think was probably a couple of weeks, and Mr. Grill—this was a day or two before I went to the company, to the power company to survey for that line. It was a close question of whether we could get in or not with that line, and if they didn't we were sunk. [470]

DEFENDANTS' EXHIBIT Q

December 10, 1938

Frank A. Garbutt,
Los Angeles, Cal.

Dear Sir:

We hereby request that you expend for us and on our account under our contract with you of November 1st, 1938, such monies as may be necessary to complete the pipe line from our drain tunnel to the tailings pond at the end of our present flume, to put our mill in condition to run, to complete the installation of the hoist, cage, compressor, etc., to pay our taxes, such insurance as is needed, such minor outlays as seem necessary to you for the protection of our property, to provide a way of disposing of our tailings from the mill when it starts up and for any similar expenses or equipment neces-

(Testimony of Frank A. Garbutt.)

sary in your opinion to the starting up and operation of the mine and mill and the protection of the property, including repairs to the road.

We understand that it is not obligatory for you to furnish any money for these purposes and that it is optional with you, but for any such monies as you may elect to advance, we will give you our notes as provided in said contract with you dated November 1st, 1938.

[Seal] MUTUAL GOLD CORPORATION

By J. E. STIEGLER

President

And E. FUSON

Secretary.

DEFENDANTS' EXHIBIT R

April 12, 1939.

Mr. Frank A. Garbutt,
Suite 712, 411 W. 7th. St.,
Los Angeles, California.

Dear Mr. Garbutt:

Being without funds for that purpose, we hereby request and authorize you to make payment to the Log Cabin Mines Company, or into its treasury, of the \$10,000 which the Mutual Gold Corporation is obligated to make to it for the purchase of 10,000

(Testimony of Frank A. Garbutt.)

shares of its capital stock, as provided in the contract of December 17, 1938 between us, yourself and the Log Cabin Mines Company, and we hereby acknowledge that this \$10,000, together with the other monies advanced for our account or for us in the past, is the obligation of the Mutual Gold Corporation, which obligation is to remain in force until our contract of December 17, 1938 between the Mutual Gold Corporation, yourself and the Log Cabin Mines Company has been completed by the carrying out of said contract.

[Seal]

MUTUAL GOLD CORPORATION

By J. E. STIEGLER

C. T. ORR,

Sec.

(Testimony of Frank A. Garbutt.)

DEFENDANTS' EXHIBIT S

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 440-367

LOG CABIN MINES COMPANY, a corporation
Plaintiff,

vs.

MUTUAL GOLD CORPORATION, a corporation,
et al,

Defendant.

JUDGMENT QUIETING TITLE
AFTER DEFAULT

In this action, it appearing to the satisfaction of
this Court, sitting in Department X 34 thereof, that

(a) The defendant Mutual Gold Corporation, a
corporation, was duly and personally served with
the Summons and Complaint herein, and

It further appearing that no appearance has been
made and no answer filed by the said defendant;
and a default of said defendant having been duly
entered; and evidence having been introduced and
heard in open court, and the court being satisfied
that the allegations of the complaint are true, and
that the relief asked for should be granted.

Now, upon motion of David E. Hinckle, Attorney
for the plaintiff Log Cabin Mines Company,

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

It is hereby Ordered, Adjudged and Decreed:

I. That at the time of the commencement of this action there was vested in the plaintiff, as the owner absolute, title to that certain contract dated July 13, 1932 for the sale of certain mining claims in Mono County, California, executed by M. N. Clark, Alice Clark Ryan, and the Chandis Securities Company as ventors, and by Russell F. Collins and Ben L. Collins as vendees, as said contract was supplemented by written instrument dated April 28, 1934 and was modified and amended by written instrument executed on or about October 9, 1936, a copy of said contract being attached, as "Exhibit A", to the complaint filed herein, and a copy of said instrument supplementing said contract being attached, as "Exhibit B", to said complaint, and a copy of said instrument modifying and amending said contract being attached, as "Exhibit C", to said complaint.

Said mining claims agreed by said contract to be conveyed are: Log Cabin, Log Cabin No. 1, Log Cabin No. 2, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5, Log Cabin No. 6, Log Cabin No. 7, Log Cabin No. 8, Mill Site, New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Log Cabin Annex, Tamarack, Oro, and Burke Fraction.

II. Plaintiff's title to the above described personal property is hereby forever quieted against any and all claims, demands and/or pretensions of said de-

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

fendant to any right, title, possession, lien, interest and/or equity in the above described personal property, and it is hereby perpetually enjoined and restrained from setting up or making any claim to or upon the personal property above described, or any part thereof.

Dated: June 13th, 1939.

WILSON

Judge of the Superior Court.

[Title of Superior Court and Cause.

REQUEST FOR ENTRY OF DEFAULT

To the Clerk of Said Court:

The defendant Mutual Gold Corporation having been regularly served with process, and having failed to appear and answer the plaintiff's complaint on file herein, and the time allowed by law for answering having expired, application is hereby made that you enter the default of said defendant, herein according to law.

DAVID E. HINCKLE

Attorney for Plaintiff.

Dated the 9th day of June, 1939.

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

[Title of Superior Court and Cause.]

DISMISSAL

To the Clerk of Said Court:

You will enter the dismissal of the above entitled action. John Doe No. 1 to No. 500 inclusive, Jane Doe No. 1 to No. 500 inclusive, and Corporation No. 1 to No. 100 inclusive.

Los Angeles, Cal., June 6, 1939.

DAVID E. HINCKLE

Attorney for Plaintiff.

[Title of Superior Court and Cause.]

SUMMONS

The People of the State of California Send Greetings to: Mutual Gold Corporation, a corporation, John Doe No. 1 to No. 500 inclusive, Jane Doe No. 1 to No. 500 inclusive, Corporation No. 1 to No. 100, inclusive, Defendants.

You are directed to appear in an action brought against you by the above named plaintiff in the Superior Court of the State of California, in and for the County of Los Angeles, and to answer the complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that **unless you appear**

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

and answer as above required, the plaintiff will take judgment for any money or damages demanded in the Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of Los Angeles, State of California, this 5th day of May, 1939.

[Seal Superior Court Los Angeles County]

L. E. LAMPTON,

County Clerk, and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

By M. LA VALLEY

Deputy.

[Title of Superior Court and Cause.]

COMPLAINT TO QUIET TITLE
TO PERSONAL PROPERTY

The plaintiff complains and alleges:

I

That plaintiff is a corporation organized and existing under the laws of the State of California and having its principal place of business in the County of Los Angeles, California.

II

That defendant Mutual Gold Corporation is a corporation organized and existing under the laws

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

of the State of Washington, and duly authorized to do business in the State of California.

III

That Corporation No. 1 to No. 100 inclusive are corporations duly and lawfully organized and doing business under their respective names.

IV

That defendants John Doe No. 1 to No. 500 inclusive, Jane Doe No. 1 to No. 500 inclusive, and Corporation No. 1 to No. 100 inclusive are sued herein under fictitious names because their true names are unknown to plaintiff; and that plaintiff will, when it ascertains the true names of said defendants, ask leave of court to amend this complaint by substituting said true names for said fictitious names.

V

That on or about July 13, 1932 a contract for the sale of certain mines and mining claims in Mono County, California was executed by M. N. Clark, Alice Clark Ryan, and the Chandis Securities Company as vendors and by Russell F. Collins and Ben L. Collins as vendees, a copy of said contract being attached hereto as "Exhibit A" and made a part of this complaint; that said contract was on or about July 18, 1932 sold and assigned by said vendees to defendant Mutual Gold Corporation; that thereafter on or about April 28, 1934 said contract was

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

supplemented by written instrument, a copy of which is attached hereto as "Exhibit B" and made a part of this complaint; that thereafter on or about October 9, 1936, said contract as so supplemented was modified and amended by written instrument, a copy of which is attached hereto as "Exhibit C" and made a part of this complaint; and that on or about March 10, 1939, in the County of Los Angeles, State of California, said contract as so supplemented, modified, and amended, was sold and assigned and delivered to plaintiff by defendant Mutual Gold Corporation, and is now in plaintiff's possession.

VI

That plaintiff is now, and at all times since on or about March 10, 1939 has been, the owner of, and in possession of, said contract as so supplemented, modified, and amended.

VII

That defendants claim and assert an interest adverse to plaintiff in and to said contract as so supplemented, amended, and modified; that the claims of defendants are without any right; and that none of said defendants has any estate, right, title, or interest whatever in said contract or in the supplement thereto or in the modification and amendment thereof.

Wherefore, plaintiff prays that each defendant be required to set forth the nature of his or its said

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

claim, and that all adverse claims of said defendants be determined by a decree of this court; and plaintiff further prays that by said decree it be declared and adjudged that plaintiff is the owner of said contract as so supplemented, amended, and modified; that none of defendants has any estate or interest whatever therein or thereto; that defendants and each of them be forever debarred from asserting any claim whatever in or to said contract or supplement thereto or amendment or modification thereof adverse to the plaintiff; and that plaintiff have judgment for its costs herein and for such other relief as may be equitable.

.....
Attorney for plaintiff

EXHIBIT A

This Agreement of Sale made this 13th day of July, 1932, by and between the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, of Los Angeles, California, hereinafter designated as the Sellers, and Russell F. Collins, of Seattle, Washington, and Ben L. Collins, of Spokane, Washington, hereinafter designated as the Buyers, Witnesseth:

That For and in Consideration of the payments to be made by the Buyers to the Sellers at the times and in the manner herein specified, and in consideration of the promises and agreements to be well and truly performed by the said Buyers, the said

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

Sellers hereby agree to sell to the said Buyers the following described patented and unpatented lode mining claims situate in Mono County, California, and more particularly described as follows, to-wit: Log Cagin, Log Cabin No. 1, Log Cabin No. 2, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5, Log Cabin No. 6, Log Cabin No. 7, Log Cabin No. 8, Mill Site, New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Log Cabin Annex, Tamarack, Oro, and Burke Fraction.

All of the above described claims having been recorded at one time or another at Bridgeport, Mono County, California, in what has been known at various times as the Mono Lake Mining District, the Bridgeport Mining District and the Homer Mining District.

And also such water rights as the said Sellers may own in connection therewith.

The condition of the titles to said property is as follows:

Log Cabin claims, Log Cabin No. 2, Log Cabin No. 6 and Log Cabin No. 7 are patented.

Log Cabin Annex is a mining location filed recently at Bridgeport by H. R. Bradley and deeded by H. R. Bradley and wife to the Sellers herein.

Claims Log Cabin, Log Cabin No. 1, Log Cabin No. 3, Log Cabin No. 4, Log Cabin No. 5 and Log Cabin No. 8 are mining locations and in the opinion of the Sellers can be patented at any time.

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

It is stated by James Simpson that claims New Year No. 2, Federal No. 1, Federal No. 2, Federal No. 3, Tamarack, Oro and Burke Fraction have all had the assessment work done on them and title to them is in good condition.

The Sellers or their immediate predecessors in interest have located those claims and have held title thereto for approximately twenty (20) years and believe their titles to be good and they hereby represent that there are no mortgages, indebtedness or other encumbrance against said claims of which they have any knowledge, but they expressly disclaim any liability for these titles, and the Buyers having been afforded an ample opportunity to examine same, hereby accept said titles, it being distinctly understood that the only estate to be conveyed hereunder is all of the right, title and interest which the said Sellers may have or may hereafter acquire thereto.

This agreement of sale is to extend for a period of five (5) years from the date hereof unless sooner forfeited or terminated as hereinafter provided. Under this agreement the said Buyers shall have the right of possession with the right to mine and develop said properties or any of them, including the right to follow and explore by proper working any vein or veins within said group of claims to the limit or exterior boundary lines thereof, to the same extent and no other as the Sellers, by virtue of their

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

title and interest in said group of claims, have or may hereafter acquire, and to follow any ore shoot or ore body found within the limits of said property in any direction to the same extent as said Sellers might lawfully do, and to break down and remove and mill or sell all commercial ores found therein except as hereinafter expressly provided, to-wit:

It is understood and agreed that until said Sellers have been paid in full for said mining claims, in accordance with the terms hereof, that the ore already exposed above the present drifts on the vein at a depth of approximately 125 feet below the collar of the shaft and within the present extreme north and south faces, shall remain intact and unless expressly permitted by permission in writing from said Sellers none of this ore shall be mined or removed from the mine and neither shall any ore at present on the dump be removed or milled by said Buyers.

In consideration of the agreements herein contained the said buyers covenant and agree with said Sellers as follows:

1. To enter upon said mining claims immediately after the execution and delivery of this agreement and after the posting of the notices hereinafter provided to be posted, and agree to work the same continuously and in good workmanlike and minerlike fashion so as to develop said property with due regard for the continuance and preservation of the

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

same as a workable mine in accordance with the covenants herein set forth.

2. The Buyers agree to work at least sixty (60) shifts of one man each of eight (8) hours' duration per month until August 10, 1932, after which date said Buyers agree to work not less than one hundred fifty (150) similar shifts per month of eight (8) hours each during the life of this agreement, it being understood that each shift is to consist of the day's work of one competent miner or its equivalent in value. It is agreed that the excess of 150 shifts per month for any given month is to be credited on work to be performed during the succeeding month or months during each year but that work during one year is not to be credited to the work to be done in any succeeding year, and that the said Buyers agree that there at all times shall be enough work performed by them to fulfill any work necessary to be performed for assessment purposes.

4. The Buyers agree to install a compressor, pump, machine drills and other necessary equipment to sink the present shaft that is now down one hundred twenty-five (125) feet from the surface to a total depth of two hundred fifty (250) feet or to the point of its intersection with the vein and to drift upon the vein from the point of intersection for a distance of not less than two hundred (200) feet, and to do any other development work that

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

said Buyers may deem advisable for the development of additional ore.

5. The said Buyers agree to well and sufficiently timber the tunnels, shafts and drifts used, opened or extended by them when necessary in said mine at all points and in accordance with good mining methods and to repair all old timbering in such workings and in all existing openings which are now open and which show any mill ore. This work of timbering and retimbering is to be done whenever and wherever it may become necessary for the safety of workmen and ore and for the preservation of said mine as a working mine, and said Buyers agree to fill all stopes with waste after the ores therefrom are removed so as to keep and leave said mine in a safe and proper condition for further development and exploration and in accordance with the usual custom of good miners.

6. The said Buyers agree that the said Sellers may at all times enter, in person or by their duly authorized agents in writing, to inspect said property and any and all parts thereof, and the said Sellers shall have the right to keep one or more representatives at all times upon said property to represent them and to inspect same but always at their own sole cost and expense except that the said Sellers may furnish one representative who shall be a practical miner or a practical mining man, able and willing to work for the said buyers,

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

performing such work as may properly be allotted to him, and this representative the said Buyers agree to pay the same wages as they pay to other employees in a similar capacity, it being understood that should the representative so nominated by said Sellers not perform as much useful work as their other similar employees that the said Sellers will either accept reduced pay for him or furnish another representative to take his place.

7. The said Buyers agree to pay for all labor, material and supplies employed or used by them in the development and operation of said mining claims under this agreement, including the payment of all taxes and assessments from and after the date of July 13, 1932, during the term of this agreement, and said Buyers agree not to permit any lienable claims, including such labor, material or supplies, to be filed against said mining property, and agree to save said Sellers harmless therefrom.

8. The said Buyers agree that before they allow any material, machinery or supplies to be brought upon said property that they will obtain and furnish to the said Sellers a release or waiver from the vendors thereof releasing and waiving any right or rights which said vendors may have to file a lien or liens against the property of the Sellers, and in like manner, before employing any labor thereon, will obtain from the employees who are to perform this labor a like release to the end that all laborers, material men or contractors will look solely to the

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

Buyers and their interest in the property for payment and will waive any right or claim that they may have against said Sellers or the property herein described owned by them.

9. The said Sellers agree that they will forthwith, upon the signing of this agreement, post or cause to be posted proper notices in conspicuous places upon said property notifying all persons employed thereon or who furnish material and supplies to the said Buyers therefor that neither said property nor said Sellers will be liable for same or will said property be liable for lien therefor.

10. The said Buyers agree that they will not commence any work upon said property nor order any material therefor until said notices have been posted and that thereafter they will maintain said notices or cause same to be maintained at all times that they are in possession of or are operating said property, and should the said Buyers commence work before said notices are posted or perform any work upon said property while said notices are not maintained thereupon, this agreement shall immediately terminate and cease at the option of the said Sellers.

11. The said Buyers agree to comply strictly with the Workmen's Compensation or Industrial Insurance Act of the State of California providing casualty insurance for all workmen injured while employed by them in the exploration and develop-

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

ment of said mining claims or for any other work performed by the said Buyers or at their instance during the term of this agreement.

12. After said shaft has been sunk to the intersection of the vein and drifted on for a distance of not less than two hundred (200) feet, if by that time sufficient tonnage of commercial ore is in sight to justify a mill, and, if not, as soon as sufficient tonnage of commercial ore is in sight, the said Buyers agree to build a suitable mill and mill buildings and to install proper milling machinery for the economical and proper milling of said ore and to proceed without delay in a minerlike fashion to mine, mill, and market said ores which have been developed on said property by the operation of said Buyers but especially excepting therefrom all ores hereinbefore referred to in the mine and on the dump as hereinbefore described.

13. The said Buyers expressly agree to impound all mill tailings which assay over One (\$1.00) Dollar per ton to the end that they will be preserved for future treatment.

14. It is understood and agreed by the parties hereto that after the said sinking, drifting and building of a suitable mill are completed and the mine is put on production that Five (\$5.00) Dollars per ton is to be allowed to the said Buyers to *cofer* the cost of all mining, milling and marketing and that the Sellers shall receive the balance over Five

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

(\$5.00) Dollars per ton, which amount shall be applied as received upon the purchase price of said property until it is paid for in full.

Should the Buyers mine and mill any ore which returns less than Five (\$5.00) Dollars per ton net, they shall pay all of the costs thereof over and above the net returns received and this shall not be a charge against the said Sellers or against any future returns which they are entitled to receive.

In consideration of the foregoing conditions and the expenditures to be made and the work to be done hereunder by the said Buyers, and in consideration of the faithfully keeping of all of the covenants herein contained, the said Sellers hereby give to the said Buyers the right to purchase all of the above described property for the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars, payable as follows: One Thousand (\$1,000.00) Dollars on or before August 1, 1932, One Thousand (\$1,000.00) Dollars on or before November 1, 1932, One Thousand (\$1,000.00) Dollars on or before January 1, 1933: One Thousand (\$1,000.00) Dollars on or before March 1, 1933, One Thousand (\$1,000.00) Dollars on or before May 1, 1933, One Thousand (\$1,000.00) Dollars on or before July 1, 1933, One Thousand (\$1,000.00) Dollars on or before September 1, 1933, One Thousand (\$1,000.00) Dollars on or before November 1, 1933, One Thousand (\$1,000.00) Dollars on or before January 1, 1934, (One Thou-

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

sand (\$1,000.00) Dollars on or before March 1, 1934 and One Hundred Forty Thousand (\$140,000.00) Dollars on or before five (5) years from date hereof, it being understood and agreed that all amounts paid by the said Buyers under the terms of this agreement shall be applied to and credited upon the several installments of the purchase price as they mature and as hereinbefore provided, and that in case said sums shall amount to the full purchase price of said claims to be paid, as herein provided prior to the expiration of the term of this agreement, or upon full payment of said installments to the said Sellers, according to the terms of this agreement, then the said Sellers shall execute a good and sufficient deed conveying to the said Buyers all their right, title and interest in and to the lode mining claims, to the water and right of way for flume hereinabove particularly referred to, clear of all encumbrances suffered or permitted by them.

The Buyers may proceed at their own expense to patent at any time they deem advisable any of the unpatented claims of said group in the name of the Sellers. The Sellers agree to cooperate and assist in obtaining such patents.

Time is of the essence of this agreement, and it is expressly agreed that in case of any violation by the Buyers of any covenant herein contained, or upon their failure or refusal to carry out or comply with all of the terms and conditions of this agreement, (labor, strikes, injunction proceedings,

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

or other outside interference except weather, over which said Buyers have no control excepted), the Sellers, at their election, may terminate this agreement.

In the event of a default by the said Buyers in performing any of the conditions or covenants herein set forth or should said buyers default in making any of the payments herein provided for at the time and in the manner specified, the Sellers may, at their option, give notice to said Buyers of the termination of this agreement by depositing such notice in the United States mail, registered and postage prepaid, addressed to the said Buyers at the mine and at the last known post office address given to said Sellers by said Buyers, and the depositing of said notices and the affidavit by the Sellers or any of them that same have been deposited shall be conclusive proof that the notices were given, and this agreement shall be terminated thereby at the option of the said Sellers.

In the event of a default by the Buyers in the performance of some covenant or condition in itself immaterial and of which default they may be unaware, the Sellers, before giving the notice as set forth, will notify the said Buyers of the default complained of and shall allow them thirty (30) days from the date of giving said notice in which to cure same and remedy said default or defaults so complained of.

In the event of the termination of this agreement

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

by default the said Buyers shall have no claim against the Sellers of any kind or nature or compensation for any labor performed, expenses incurred or services rendered in connection herewith or hereunder, and all machinery, tools, and appliances, fast or loose, placed upon said property by them or under this agreement shall remain upon said property as a part thereof and become the property of the said Sellers.

It is understood and agreed that the said Buyers shall have the use of all buildings, machinery and equipment now on said premises but in the event of the termination of this agreement same are to be left in as good repair as they now are, necessary and usual wear and tear excepted.

It is agreed that the said Buyers will not record this agreement until they have paid at least Ten Thousand (\$10,000.00) Dollars thereon, and should said agreement be recorded by them or by any one for or under them prior to the completion of the payments to the amount of Ten Thousand (\$10,000.00) Dollars, such recordation shall, at the option of the said Sellers, immediately terminate this agreement and this option shall be evidenced by the recordation of the declaration of such intention or desire by the said Sellers.

All payments to be made to the said Sellers by the said Buyers hereunder shall be made to their order at the Citizens National Trust and Savings Bank of Los Angeles.

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

This instrument shall be binding upon the heirs, assigns, and successors of the respective parties hereto but before the said Buyers shall assign same they will notify the said Sellers of such intention and at the time of such assignment will obtain for the Sellers in form satisfactory to them a written agreement in which their assignees accept the same responsibility as the Buyers have hereunder, and said Buyers shall not be relieved from their liability hereunder even in event of an assignment unless specific consent thereto is given in writing by the said Sellers.

In event of the insolvency of the Buyers or of their successors and assigns, or in event that proceedings in involuntary bankruptcy are brought against them, said Sellers may, at their option, terminate this lease.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and date first above written.

CHANDIS SECURITIES
COMPANY

By HARRY CHANDLER,
President.

M. N. CLARK,
ALICE CLARK RYAN,
Sellers.

RUSSELL F. COLLINS,
BEN L. COLLINS,
Buyers.

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

State of California

County of Los Angeles—ss.

On this 13 day of July, 1932, before me, Rose B. Coidarrens, a notary public, in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared Harry Chandler, known to me to be the President of the Chandis Securities Company, the corporation described in and which executed the above instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

ROSE E. COIDARRENS,
Notary Public.

Commission expires February 8, 1935.

State of California

County of Los Angeles—ss.

On this 13 day of July, A. D. 1932, before me, Rose B. Coidarrens, a notary public, in and for the said county and state, residing therein, duly commissioned and sworn, personally appeared M. N. Clark, Alice Clark Ryan, Russell F. Collins and Ben L. Collins, known to me to be the persons whose

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

names are subscribed to the above instrument, and acknowledged that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

ROSE B. COIDARRENS,

Notary Public.

Commission expires February 8, 1935.

EXHIBIT B

SUPPLEMENTAL AGREEMENT

Referring to that certain agreement of sale made July 13, 1932 by and between the Chandis Securities Company, M. N. Clark, and Alice Clark Ryan, of Los Angeles, California, therein described as the Sellers, and Russell F. Collins, of Seattle, Washington, and Ben L. Collins, of Spokane, Washington, hereinafter designated as the Buyers, in which the Sellers agree to sell to the Buyers that certain mining property located on Mono County, known as the Log Cabin property, more particularly described in said agreement which is hereby made a part hereof, said parties agree to and with each other to modify same as follows:

Whereas on page 4, paragraph 4 of said agreement, the Buyers agreed, amongst other things, to sink the existent vertical shaft from a depth of 125 feet to a total depth of 250 feet or to the point of its intersection with the vein, and

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

Whereas in the sinking of said shaft the Buyers encountered sufficient water to make the pumping thereof very expensive, and

Whereas they are desirous of substituting other work therefor, and propose, in lieu of the sinking of said shaft to the said depth, that they run an adit level, which they believe will be not less than 1200 feet in length, from the surface to said vein at or near the point where it would be intersected by said shaft and at a depth to where it will strike the ledge not less than said 250 feet in depth from the surface, and

Whereas the said Sellers are agreeable to this substitution,

Now Therefore, in consideration of the agreement of said Buyers, and their successors in interest, the Mutual Gold Corporation, that they will run said adit level in accordance with all of the general terms as set forth in said original contract, the Sellers hereby consent that said original contract shall be amended so as to permit the running of said level instead of the sinking of said shaft, and further agree that the Buyers may sink what is known as the North winze on the vein as far as they desire to sink same.

The work upon said adit level shall be carried on upon the same terms and conditions as to the amount of work to be performed as applied to the sinking of said shaft.

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

The Sellers also agree that in event the Buyers run the completed adit level as agreed to the point where it intersects said vein that they will extend the time of said contract of July 13, 1932 for an additional period of nine (9) months.

Whereas, further, the Buyers have erected a mill upon said property in the anticipation of the completion of said shaft by or before this time, and

Whereas they are desirous of operating said mill for the purpose of testing same and for the purpose of determining its adaptability to same the values contained in the ore from said property, and

Whereas, under the existing contract of July 13, 1932 they do not have the privilege of milling ore except as therein provided,

Now Therefore, in consideration of the premises and of the covenants and agreements in this modification contained, the said Sellers agree that when desired by the Buyers and on reasonable notice from them in order to enable the Sellers to send a representative to supervise this work, that the Sellers will allow the Buyers to mill enough ore from said property to test said mill but not to exceed an amount, however, necessary to produce gold to the value of approximately \$1000.00 and the Buyers will pay the cost of such representative, which cost shall be his actual expenses and not to exceed \$10.00 per day for such time as he puts in on the property.

In consideration of the above, the Sellers agree to the substitution of the work of running the

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

adit level to the intersection of the vein in lieu of the sinking of said shaft and the Buyers agree to perform said work in accordance with all of the terms of said contract, which it is agreed between the parties hereto is modified only to the extent of this Supplemental Agreement and otherwise shall remain in full force and effect.

In Witness Whereof the parties hereto have hereunto set their hands and seals the 28 day of April, 1934.

CHANDIS SECURITIES COMPANY

By HARRY CHANDLER

President

M. N. CLARK

ALICE CLARK RYAN

Sellers

RUSSELL F. COLLINS

BEN L. COLLINS

Buyers

MUTUAL GOLD CORPORATION

By RUSSELL F. COLLINS,

Pres.

Successors in interest to the Buyers

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

EXHIBIT C

Referring to that certain agreement made the 13th day of July, 1922, by and between the Chandis Securities Company, M. N. Clark and Alice Clark Ryan, therein designated as the Sellers, in which agreement said Sellers agree to sell to Russell F. Collins and Ben L. Collins, designated therein as the Buyers, that certain property known as the Log Cabin Mines situated in Mono County, California, and more particularly described in said agreement, which said agreement for the purposes herein is hereby made a part hereof, and which said agreement was, with the consent of the Sellers, assigned to and assumed by Mutual Gold Corporation; and

Referring to that certain Supplemental Agreement made April 28, 1934, by and between the same parties,

The same are hereby modified and amended as follows this 9th day of October, 1936.

For and in Consideration of the undertaking and agreement by the Mutual Gold Corporation, the assignee of said Buyers to spend upon said property the additional sum of Thirty Thousand (\$30,000.00) Dollars under the direction of said Mutual Gold Corporation, as hereinafter set forth, the Chandis Securities Company and Alice Clark Ryan, for herself and as assignee of M. N. Clark, hereby agree to and with the Mutual Gold Corporation to modify said agreement as follows:

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

The Sellers will allow to the Corporation the sum of Eight (\$8.00) Dollars per ton to pay the expenses of mining and milling all ore taken out in development work below the ore reserved in the contract of July 13, 1932, down to the drifts existing on that date, approximately one hundred twenty-five (125) feet below the collar of the present main working shaft and within the extremen North and South faces as they existed on the 13th day of July, 1932, provided that this work consists of raises and levels and that the raises are not closer to each other than two hundred (200) feet and the levels are not closer than one hundred (100) feet to each other, and

Provided further, that all receipts in excess of Eight (\$8.00) Dollars per ton from mining and milling of said ores from this work shall be *apdi* to the Sellers to apply upon the purchase price hereunder, and under said original contract of July 13, 1932, and

Provided further, that the Corporation may, as provided in the original contract, mill any other ore outside of the herein described area, and should said Corporation mill or mine any such, the allowances for mining and milling thereof shall be the same as set forth in the original contract, to-wit, Five (\$5.00) Dollars per ton and that all excess over and above these amounts shall be paid to the Sellers as provided in said contract, and

Provided further, that said Corporation shall not mill any of the ore prohibited in the original con-

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

tract without the additional written consent of the Sellers being first had and obtained, and

Provided further, that should the aggregate of these payments not amount to the sum of Ten Thousand (\$10,000.00) Dollars on or before November 1, 1937, that the Corporation shall make up any such deficit, and

Provided further, that should said payments from the milling and marketing of ores as aforesaid not amount to Ten Thousand (\$10,000.00) Dollars for the years ending November 1, 1938, November 1, 1939, and November 1, 1940, that the Corporation will in like manner make up such deficit on account of the purchase price so that the Sellers will receive the minimum sum of Ten Thousand (\$10,000.00) Dollars during each of said years, and

Provided further, that the remainder of the purchase price shall be payable on or before November 1, 1941.

The Corporation warrants to the Sellers, as a partial consideration for this amendment, that it has on deposit Fifteen Thousand (\$15,000.00) Dollars in the Old National Bank at Spokane, Washington, which money can be drawn only upon the order of J. A. Vance, its General Manager, and only for the purpose of carrying on the work aforesaid, and that it has Fifteen Thousand (\$15,000.00) Dollars more subscribed for this purpose which will be available upon ten (10) days' call to be used for the same purposes and in the same manner, and

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

that the expenditures of said total of Thirty Thousand (\$30,000.00) Dollars for the purposes as herein set forth, to-wit, mining, milling and developing said property by the Mutual Gold Corporation under the advice and supervision of capable management is guaranteed by said Corporation.

Should the Mutual Gold Corporation fail to keep any and all of the provisions of this modification agreement, the Corporation may, at its option, terminate same by giving notice to the Sellers of its desire to do so, in which event said original agreement shall stand in all respects as though this modification agreement had not been made.

CHANDIS SECURITIES COMPANY

By

and

Sellers

Accepted this day of October, 1936

MUTUAL GOLD CORPORATION,

by

and

State of California,

County of Los Angeles—ss.

S. C. Hall being first duly sworn, deposes and says: That he is president of the Log Cabin Mines Company, a corporation, plaintiff in the foregoing and above entitled action; that has read the

(Testimony of Frank A. Garbutt.)

(Defendants' Exhibit S—continued)

within complaint and knows the contents thereof; and that the same is true of his own knowledge except as to the matters which are herein stated on his information or belief, and as to those matters believes it to be true.

S. C. HALL

Subscribed and Sworn to before me this 5th day of May, 1939.

ALTHEA K. HINCKLE,

Notary Public in and for said County and State.

My Commission Expires May 20, 1940.

DAVID E. HINCKLE,

called as a witness on behalf of plaintiffs in rebuttal, being first duly sworn, was examined and testified as follows:

The Clerk: State your name.

A. David E. Hinckle.

Direct Examination

Q. By Mr. Abel: Mr. Hinckle, you are attorney for the defendants in this case?

A. Some of them.

Q. You were attorney for all of them until your withdrawal at the start of the trial, when you withdrew as attorney for Mutual Gold Corporation, and with the exception of Chandis Securities Company?

(Testimony of David E. Hinckle.)

A. That is right, that is right.

Q. You are shown Defendants' Exhibit S. Did you prepare the complaint in that case?

A. Yes, sir.

Q. By the Court: What is it, the usual short form of quiet title complaint? [474]

A. Very much the same, your Honor, with an exhibit consisting of the contract which was being quieted.

The Court: I will examine it afterwards.

Q. By Mr. Abel: With reference to the defendants named as "John Doe No. 1 to No. 500, inclusive," and "Jane Doe No. 1 to 500, inclusive," was it at your suggestion that those John Does were put in as defendants?

A. I dictated them; yes.

Q. And does that apply also to the corporations named as "Corporations No. 1 to 100, inclusive, defendants?"

A. That is right.

Q. Did you have before you the letter of Mr. Grill on that subject at that time? You are shown Plaintiffs' Exhibit 91, particularly the letter of April 24, 1939 by Mr. Grill to Mr. Garbutt on the subject of whether the stockholders should be made defendants?

A. I don't know, Mr. Abel, whether I ever saw that letter before this trial or not.

Q. The letter just before that, a copy of the letter from Garbutt to Mr. Grill and a copy to Mr. Weller, Mutual Gold attorney at Spokane?

(Testimony of David E. Hinekle.)

A. I think I saw that.

Q. You had that letter. And you notice there with reference to making the stockholders defendants in order to separate the sheep from the goats?

A. Yes; I see that paragraph. [475]

Q. Which class did the dissenting stockholders fall in; were they sheep or were they goats, if you know?

A. I don't know.

Q. Under that classification?

A. I regret that I am unable to answer the question.

Q. Did you go up to Leevining and make service upon Russell Collins as statutory agent of Mutual Gold Corporation?

A. I made service on him. I did not go for that purpose, but while I was there I did make the service.

Q. You knew at the time that the complaint was prepared that Mutual Gold was not going to defend the action?

A. I probably did. [476]

Q. At that time you knew that a suit was pending in Spokane County, State of Washington?

A. Yes, sir; I did.

Q. Wherein A. P. Bateham, representing the minority stockholders, had sued to quiet title to this same contract in the State of Washington?

A. I did.

Q. And that suit was pending at that time?

A. That is right.

Q. Involving the same contract? [478]

(Testimony of David E. Hinckle.)

A. That is right.

Q. And you knew that that was a representative suit: A. P. Bateham, as a stockholder, suing Mutual Gold and Log Cabin? A. That is right.

Q. To quiet title? A. That is what——

Q. To this same contract?

A. That is what I referred to when I said there was a claim, some claim of Mutual Gold Corporation.

Q. And you knew that that suit was brought by Bateham on behalf of Mutual Gold Corporation?

A. I knew that; and that is what I referred to in my complaint as the claim of the Mutual Gold Corporation.

Q. There was no evidence introduced in support of the decree in the Superior Court?

A. No formal taking of evidence.

Q. I mean in this case, this Los Angeles court?

A. That is what I mean. [479]

FRANK A. GARBUTT,

recalled as a witness in behalf of Defendants, having been previously sworn, testified as follows:

Further Direct Examination

Q. By Mr. Hinckle: Mr. Garbutt, yesterday you testified that your agency for the owners was terminated on November 3, 1938. Have you had an oppor-

(Testimony of Frank A. Garbutt.)

tunity to check that over to see whether it was accurate or not?

A. That was a lapsus linguae. It should have been [484] October.

Q. October 3rd? A. Yes.

Q. 1938? A. Yes. [485]

RUSSELL F. COLLINS,

recalled as a witness in behalf of Defendants, having been previously sworn, testified as follows:

Further Direct Examination

Q. By Mr. Hinckle: Mr. Collins, I will show you a page of the Plaintiffs' complaint, page 7 of the bill of particulars, in which they set out a number of items that were due and owing on September 2nd, or about that time, and ask you—no. I will call your attention to the fact that they total \$1,284.93; and then that there are two other items making \$550.44, or a total of \$1,835.37. I will ask you if those items were due and owing on or about August 6, 1938, or if not all of them, if at least some of them were?

A. Well, I know some of them were due, and that even my own claims the company owed me but they could not pay me even traveling expenses.

Q. How long had this been due?

A. Quite a while. I had taken about \$1,500 in stock to supply the money.

(Testimony of Russell F. Collins.)

Q. How long had this been due?

A. Oh, I suppose several months. Some of it, I think, had been due a year or so.

Q. Did the company have the money on August 6, 1938 to pay those claims that were then due?

A. No; they didn't.

Mr. Hinckle: That is all. [488]

Mr. Abel: Is there any contradiction of any of the items?

Mr. Hinckle: None at all.

Mr. Abel: Of that account?

Mr. Hinckle: None at all.

Mr. Anderson: It is covered by stipulation.

Mr. Hinckle: It is covered by stipulation. That is all, Mr. Collins. [489]

PLAINTIFFS' EXHIBIT 94

NOTICE OF ANNUAL MEETING OF STOCK- HOLDERS OF MUTUAL GOLD CORPORATION

Notice Is Hereby Given that the annual meeting of the stockholders of Mutual Gold Corporation will be held at the office of the company at 401 Fernwell Building, Spokane, Washington, on February 1st, 1939, at eleven o'clock A. M. in accordance with the by laws of said corporation for the purpose of electing a board of directors for said corporation for the ensuing year, for hearing the reports of officers of said corporation and for the

transacting of any other business that may properly come before said meeting.

MUTUAL GOLD CORPORATION

By E. FUSON

Secretary.

PLAINTIFFS' EXHIBIT 95

(Post card addressed to)

Mutual Gold Corporation,
401 Fernwell Building,
Spokane, Wash.

PROXY

Know All Men By These Presents: That I, the undersigned, do hereby constitute and appoint J. E. Stiegler or in the event of his inability to act, F. T. Hickcox or W. L. Grill, my true and lawful attorney to represent me at the annual meeting of the stockholders of Mutual Gold Corporation to be held on the first day of February, 1939, at eleven o'clock A. M. at the office of the company at 401 Fernwell Building, Spokane, Washington, and do hereby authorize and empower him to vote at said meeting and at any adjournment thereof for me and in my name and stead upon the stock then standing in my name on the books of said company, and I hereby grant my said attorney all the powers that I should possess if personally present at said meeting hereby revoking all former proxies by me made.

Witness, my signature this.....day of January, 1939.

.....
Witnessed By:
.....

—
A. R. CARTER,

recalled as a witness in behalf of Plaintiffs in rebuttal, having been previously sworn, testified as follows: [498]

Cross Examination

Q. Please state what the paper you now hold is.

A. It is an operating statement from September 1st, 1938 to July 31, 1939 of the Mutual Gold Corporation and the Log Cabin Mines Company. [499]

Q. Does that include such operations as Mr. Garbutt had?

A. Yes; they were all under the control of Mr. Garbutt that are listed on that sheet. [500]

Recross Examination [501]

Q. Did you have charge of the social security records required by law? A. I compiled them.

Q. You compiled them? A. Yes, sir. [502]

Q. During the whole period? A. Yes, sir.

Q. In what name or names was the account carried with the Government?

A. Well, at first it was carried under the name of Frank A. Garbutt for—

(Testimony of A. R. Carter.)

Q. Until when?

A. If I remember right, it was until October 31, 1938.

Q. And after then?

A. From October—or from November 1st to April, 1939, it was carried in the name of Mutual Gold Corporation.

Q. And therefrom?

A. It was carried in the name of the Log Cabin Mines Company. [503]

The Court: I think the findings should also be read in, shouldn't they, in view of the fact that the judgment—

Mr. Hinckle: I was going to ask the Court's leave to read part of the findings, anyway.

Mr. Abel: All right; I will offer the findings.

The Court: And I will read them when I can study this case, without the necessity of reading them now. I assume they are long, and findings usually are when drawn by counsel.

Mr. Hinckle: It is an exemplified copy and we might offer it in evidence. I do not think it will materially clutter the record any more.

The Court: I do not think we have to worry about that much, gentlemen. It is pretty well encumbered now.

Mr. Abel: Well, it is the last straw that breaks the camel's back. If counsel desires to put the whole record in, I have no objection.

Mr. Hinckle: I offer it as defendants' Exhibit.
Your Honor, we have to——

The Clerk: Exhibit T. [510]

DEFENDANTS' EXHIBIT T

In the Superior Court of Washington
for Spokane County

No. 103067

J. A. VANCE, VANCE LUMBER COMPANY, a
corporation, W. G. PEEBLES, and LOUISE
WOODWARD,

Plaintiffs,

vs.

MUTUAL GOLD CORPORATION, a corporation,
Defendant.

SUMMONS

The State of Washington, To the said Mutual Gold
Corporation, a corporation, Defendant:

You are hereby summoned to appear, within
twenty days (20) after the service of this summons
upon you, exclusive of the day of service, and de-
fend the above entitled action in the Court afore-
said, and in case of your failure so to do, judgment
will be rendered against you according to the de-
mand of said Complaint, which will be filed in the

(Defendants' Exhibit T—continued)

office of the Clerk of said county, a copy of which is herewith served upon you.

O. C. MOORE,

P. O. Address,

501 Peyton Building,

Spokane, Washington.

W. H. ABEL,

P. O. Address,

Montesano, Washington

Attorneys for Plaintiffs.

[Endorsed]: Filed Feb. 28, 1939. Frank C. Nash,
Clerk.

[Title of Superior Court and Cause.]

COMPLAINT

Plaintiffs complain of defendant, and for their several causes of action herein allege:

I.

At all times herein mentioned Vance Lumber Company has been and is a corporation, duly organized under and by virtue of the laws of the State of Washington; that it has paid its license fees last due unto the State.

II.

At all times herein mentioned Mutual Gold Corporation, defendant herein, has been and still is a corporation duly organized and existing under and by virtue of the laws of the State of Washington.

(Defendants' Exhibit T—continued)

III.

About the year 1932, defendant, as vendee, acquired a certain mining property (hereinafter referred to as the mine) in Mono County, California. That its contract of purchase required it to prospect, develop and operate the mine. Prior to, and since August, 1936, defendant expended large sums of money in opening up, developing, and making said mine valuable, and thereby, and with the funds borrowed on production notes as hereinafter alleged, said mine became and was of great and substantial value, capable of continuous and productive operation with large and substantial profit to defendant.

IV.

About August, 1936, defendant was in need of funds to fully develop and operate the mine, and thereupon borrowed from J. A. Vance \$8,000, from Vance Lumber Company \$6,000, from W. G. Peebles \$1,000, and from Louise Woodward \$1,000, for and on account of which the defendant duly executed production notes to J. A. Vance for \$8,000, to Vance Lumber Company for \$6,000, to W. G. Peebles for \$1,000, and to Louise Woodward for \$1,000, which Mutual Gold Corporation jointly and severally promised to pay according to the terms of said production notes. That said notes were upon a common form, a true copy of which is attached hereto, marked Exhibit "A" and made a part hereof, the only difference being in the amount of said notes, depending upon the amount of the loan, and

(Defendants' Exhibit T—continued)

therein and thereby the defendant promised to pay the several note holders the amount of their respective notes according to the tenor thereof. Each production note provided defendant would, and it agreed to, pay such note in the amount expressed thereon, being the amount of said loan, and provided, *inter alia*:

“ . . . out of net production receipts accruing from the sale of ores from its mining property, before any dividends shall be declared or paid by it upon its capital stock, and in no other manner whatsoever, except that in case of a voluntary or involuntary sale of its mining property, any balance unpaid thereon shall be paid out of the proceeds thereof before any distribution shall be made to its stockholders.

“ ‘Net production receipts’ hereinbefore referred to shall be construed to mean such receipts as shall remain after deducting therefrom all of the costs of producing, handling, and milling said ore, necessary corporation expenses and taxes, a reasonable sum for mine development, such sum as the board of directors shall determine may be necessary for the purchase and/or payment of necessary mining equipment and payments on account of the purchase price of said mining property by royalty or otherwise.”

V.

As an inducement to the plaintiffs, and to each of the persons loaning money for and upon said

(Defendants' Exhibit T—continued)

production notes, the defendant agreed that the holders of said production notes were to select a manager to operate the mine, and that pursuant thereto, the plaintiff J. A. Vance was so selected and appointed manager under a written contract of management, a true copy of which is hereto attached, marked Exhibit "B", and made a part hereof.

VI.

The defendant in all borrowed about \$30,000 on production notes, as aforesaid, and executed notes accordingly, and the funds derived from said production notes were actually used in the development and operation of the mine, and were substantially all expended by the summer of 1938, at which time the funds of defendant for development and operation were exhausted.

VII.

September 2, 1938, defendant, without the knowledge or consent of plaintiffs, fraudulently and without consideration wrongfully and unlawfully deeded, conveyed, and disposed of said mine to Frank A. Garbutt, and thereby ousted J. A. Vance as manager, and thereby disabled itself permanently so that it could not perform the management contract, or pay, or ever be in a position to pay the production notes, and put it out of its power to obtain the net receipts or any receipts of the mine. At said time, the mine was valuable, with large amounts of valuable ore, substantially blocked out, and capable of being mined and milled at a sub-

(Defendants' Exhibit T—continued)

stantial profit, and sufficient to pay and discharge the production notes, and all thereof, out of net receipts, as defined in the notes.

VIII.

By the said acts of defendant, each of the plaintiffs has been damaged in the full amount of the production notes severally held by them, and each of them claim damage as follows: J. A. Vance, \$8,000; Vance Lumber Company, \$6,000; W. G. Peebles, \$1,000; Louise Woodward, \$1,000, together with interest thereon from September 2, 1938, at the legal rate.

Wherefore plaintiffs pray judgment against the defendant as follows:

(1) In favor of J. A. Vance in the sum of \$8,000, with interest as above alleged;

(2) In favor of Vance Lumber Company in the sum of \$6,000, with interest as above alleged;

(3) In favor of W. G. Peebles in the sum of \$1,000, with interest as above alleged;

(4) In favor of Louise Woodward in the sum of \$1,000, with interest as above alleged;

(5) And for their costs of suit herein.

O. C. MOORE and

W. H. ABEL

Attorneys for Plaintiffs

Office and Post Office Addresses:

O. C. MOORE

Peyton Building

Spokane, Washington

W. H. ABEL

Montesano, Washington

(Defendants' Exhibit T—continued)

State of Washington

Grays Harbor County—ss.

J. A. Vance, being first duly sworn, on oath deposes and says: That he is one of plaintiffs herein, and makes this verification for and on behalf of each of said plaintiffs, having authority so to do; that he has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

J. A. VANCE

Subscribed and Sworn to before me this 18th day of February, 1939.

ELAINE VEYSEY

Notary Public in and for Washington
Residing at Montesano, Washington

EXHIBIT "A"

"No.

\$.....

"Spokane, Washington

"For Value Received, the undersigned, a Washington corporation, agrees to pay to.....
the sum of.....Dollars, without interest, out of net production receipts accruing from the sale of ores from its mining property, before any dividends shall be declared or paid by it upon its capital stock, and in no other manner whatsoever, except that in case of a voluntary or involuntary sale of its mining property, any balance unpaid hereon shall be paid out of the pro-

(Defendants' Exhibit T—continued)

ceeds thereof before any distribution shall be made to its stockholders.

“ ‘Net production receipts’ hereinbefore referred to shall be construed to mean such receipts as shall remain after deducting therefrom all of the costs of producing, handling and milling said ore, necessary corporation expenses and taxes, a reasonable sum for mine development, such sum as the Board of Directors shall determine may be necessary for the purchase and/or payment of necessary mining equipment, and payments on account of the purchase price of said mining property, by royalty or otherwise.

“All sums which the undersigned shall have for the retirement of this and similar certificates shall be applied pro rata upon the same.

“The execution of this certificate has been authorized by resolution of the Board of Directors.

“Dated this..... day of....., 1936.

“MUTUAL GOLD
CORPORATION

“By
President

“Attest:

.....
Secretary”

(Defendants' Exhibit T—continued)

EXHIBIT "B"

This agreement, made and entered into this 29th day of August, 1936, by and between Mutual Gold Corporation, a corporation, party of the first part, and J. A. Vance, party of the second party, Witnesseth:

That Whereas, the party of the first part is contemplating the raising of approximately the sum of \$30,000 to place its mining property, located near Mono Lake, California, in operation; and

Whereas, the party of the second part has agreed to assist in the raising of said amount to the extent which he has heretofore advised the board of directors of the party of the first part; and

Whereas, the party of the first part has agreed, if said fund is raised, the party of the second part shall serve as general manager under certain terms and conditions; now, therefore,

It Is Agreed as follows, to-wit:

That the party of the second part is hereby employed as general manager of the party of the first part, with full and complete authority for and on behalf of the party of the first part to expend the sum of \$30,000 to place the mine of the party of the first part in production and to pay such obligations which shall have been incurred by the company in connection with said property during the months of August and September, 1936.

That the party of the second part shall remain as general manager of the party of the first part

(Defendants' Exhibit T—continued)

after the said mine shall have been placed in production and during the operation of said mine until such time as the said sum of \$30,000 shall have been fully repaid to parties advancing said funds to the party of the first part, in accordance with the terms of such agreement, as shall be made by first party with parties advancing said funds.

That the party of the second part shall serve without any compensation whatsoever, except that he shall be entitled to full reimbursement for all expenses which he shall incur in connection with his position as general manager, which said expenses shall be paid monthly.

The party of the second part shall employ M. J. Keily as a mining engineer upon said property if he is able to make satisfactory arrangements with him; but if not, party of the second part shall have the right to employ such mining engineer as he may select with the approval of the board of directors of the first party.

That in the event of the death, resignation or inability of the party of the second part to act as the general manager, those subscribing for the said sum of \$30,000 shall have the right to designate a new general manager and the party of the first part agrees to employ such general manager as may be designated; and in connection with the designation of such general manager, if those raising said funds are unable to agree in the selection of the general manager, those advancing a majority in amount of

(Defendants' Exhibit T—continued)

the funds shall have the right to designate the new general manager to be appointed in the place and stead of the said party of the second part.

That the said funds so raised for the purpose of placing the said mine in production shall be placed in a special fund of said corporation and may be withdrawn only upon the check of the party of the second part for and on behalf of said corporation, or such other party as the party of the second part may designate; but in the event that the party of the second part shall designate any other person, except G. F. Ferbert or such other party as may be suitable to first party, to withdraw said funds, the party of the second part shall be responsible for the withdrawal thereof.

That the party of the second part shall incur no personal liability for any matter or thing whatever which he may do for and on behalf of this corporation while acting under the terms of this contract, and as general manager of said corporation, and shall incur no personal liability for any contracts or obligation which he may incur for and on behalf of the party of the first part, while acting as general manager of the party of the first part, nor shall second party be liable for any mistakes or errors in judgment or any omissions of any character while acting as general manager of the first party as herein provided.

In Witness Whereof, we have hereunto set our hands and seals the day and year in this instrument

(Defendants' Exhibit T—continued)
first above written.

MUTUAL GOLD
CORPORATION

(Signed) By J. E. STIEGLER

President

(Signed) Attest: E. FUSON,

Secy.

First Party

(Signed) J. A. VANCE

Second Party

The foregoing contract is hereby approved by the following as directors of Mutual Gold Corporation, a corporation.

(Signed) J. E. STIEGLER

(Signed) W. L. GRILL

(Signed) RUSSELL F. COLLINS

(Signed) J. A. VANCE

(Signed) R. P. WOODWORTH

(Signed) FRED P. FREEMAN

[Endorsed]: Filed Feb. 28, 1939.

[Title of Superior Court and Cause.]

AMENDED ANSWER

Comes Now the defendant and for answer to the complaint of plaintiff herein alleges:

I.

Admits paragraphs I and II of said Complaint.

(Defendants' Exhibit T—continued)

II.

Admits that part of paragraph III of said complaint up to and including the words "and making said mine valuable" in line four on page two of said complaint, and admits that said mine was of considerable potential value and capable of productive operation under proper management and denies each and every other allegation, matter and thing in said paragraph III.

III.

Answering paragraph IV, defendant admits that it borrowed from J. A. Vance the sum of \$2,666.66, and no more; from Vance Lumber Company, the sum of \$2,000.00, and no more; from W. G. Peebles the sum of \$333.33, and no more; and from Louise Woodward, the sum of \$333.33, and no more, and admits the remaining allegations of said Paragraph IV.

IV.

Admits paragraph V of said Complaint.

V.

Answering paragraph VI of plaintiffs' complaint, defendant denies that it borrowed the sum of \$30,000.00 as alleged in said complaint, or any sum in excess of the sum of \$10,000.00, and admits the remaining allegations of said paragraph VI.

VI.

Denies each and every allegation, matter and thing set forth in paragraph VII of said Complaint save

(Defendants' Exhibit T—continued)

as the same may be hereafter specifically admitted.

VII.

Denies each and every allegation, matter and thing set forth in paragraph VIII and specifically denies that the said plaintiffs have been damaged in the various amounts set forth in said paragraph or at all.

And for Further Answer and by Way of Affirmative Defense, defendant alleges:

I.

That in the month of July, 1932, plaintiff, J. A. Vance, was elected a director and a Vice President of defendant company and remained a director and Vice President continuously thereafter until the month of September, 1938.

II.

That plaintiff, J. A. Vance, from and after July, 1932, assumed and took over general charge of the mining property purchased by defendant and purchased machinery and a mill to be used on said property and superintended the construction of said mill and the placing of said machinery.

III.

That although plaintiff claimed to have great ability and knowledge regarding mining machinery and mills, having previously been engaged in the saw mill business, he purchased and had transported

(Defendants' Exhibit T—continued)

to defendant's property, at great expense to defendant, a second hand stamp mill, which was totally inadequate to perform the work required of it, plaintiff having wholly failed to determine the kind of mill necessary to properly handle and mill the ores from defendant's property so as to effect the best possible saving of values therefrom, and purchased and had transported to the property of defendant at great expense to defendant, a second hand Diesel Engine, which ran backwards and had to be entirely worked over to be usable for the purpose for which it was intended and which has ever since given much trouble in its operation, and is of no practical value to defendant.

IV.

That although plaintiff claimed to be an expert in the construction of mills and installation of machinery, he insisted on and did build said mill and install the machinery on defendant's property contrary to the advice of expert mining engineers and millwrights furnished by defendant so that the same was so expensive to operate and so ineffectual in the saving of values from the ores milled that the cost to defendant company for the ores mined and milled exceeded the values extracted and saved therefrom by the plaintiffs' operations.

V.

That by reason of the foregoing allegations in this defense set forth, the finances of defendant com-

(Defendants' Exhibit T—continued)

pany were exhausted and it was forced thereby to suspend operations in 1938.

VI.

That at a meeting of the stockholders of defendant company on August 6th, 1938, at which meeting plaintiff, J. A. Vance, was personally present, and the three remaining plaintiffs all being stockholders of defendant were represented by their proxies and after a full discussion of the affairs of the defendant company, financial and otherwise, the following resolution was passed by the unanimous vote of all stockholders represented at said meeting, to-wit:

“Resolved that the Board of Directors of this corporation be and they are hereby authorized, empowered and directed to sell, lease, deal with, operate, exchange or otherwise dispose of, to any person, persons or corporation desiring to purchase, lease, deal with, exchange, operate same, any part of or all of the assets of this corporation, at such time or times, for such price and upon such terms and conditions, for cash or otherwise, including the exchanging for shares in another corporation, domestic or foreign, as they in their absolute discretion deem expedient, advisable or desirable, and to perform any other acts in this connection which in their judgment they may deem necessary or advisable.”

(Defendants' Exhibit T—continued)

VII.

That in accordance with the authority vested in them by said resolution, the board of directors of defendant company, acting in their discretion and best judgment entered into a contract with one Frank A. Garbutt of Los Angeles, California, for the operaiton of said mining property, a true copy of said contract being marked Exhibit "A" attached hereto and made a part hereof as though set out in full herein.

For a Second Affirmative Defense and by Way of Set Off and Counter Claim, Defendant alleges:

I.

That the defendant borrowed from the plaintiff herein in the fall of 1937, the following sums of money, to-wit:

From plaintiff, J. A. Vance, the sum of \$2,666.66

From plaintiff, Vance Lumber Company, the sum of \$2,000.00

From plaintiff, W. G. Peebles, the sum of \$333.33, and

From plaintiff, Louise Woodward, the sum of \$333.33

and that defendant at the time of borrowing the said money from the various plaintiffs above named, executed and delivered to said plaintiffs the said production notes, as follows:

(Defendants' Exhibit T—continued)

To plaintiff, J. A. Vance, a note in the sum of \$8,000.00

To plaintiff, Vance Lumber Company, a note in the sum of \$6,000.00

To plaintiff, W. G. Peebles, a note in the sum of \$1,000.00, and

To plaintiff, Louise Woodward, a note in the sum of \$1,000.00

II.

That the said notes so executed and delivered by defendant to the various plaintiffs were usurious and that defendant is entitled to have set off against the amounts actually loaned by plaintiffs to defendant the amount of said note in excess of the amount of the loan made by each of plaintiffs to defendant.

Wherefore, defendant prays that plaintiffs take nothing by their complaint herein; that said action be dismissed and that defendant have judgment against plaintiffs for its taxable costs therein incurred.

BROWN & WELLER

Attorneys for Defendant.

State of Washington
County of Spokane—ss.

C. T. Orr, being first duly sworn upon his oath, deposes and says:

That he is Secretary of the defendant Company; that he has read the above and foregoing Amended

(Defendants' Exhibit T—continued)

Answer; knows the contents thereof and that the same is true as he verily believes.

C. T. ORR.

Subscribed and Sworn to before me this 20th day of May, 1939.

E. D. WELLER

Notary Public in and for the State of Washington,
residing at Spokane.

Copy received this 20 day of May, 1939.

O. C. MOORE

Attorneys for Ptf.

[Endorsed]: Filed May 23, 1939. Frank C. Nash,
Clerk.

EXHIBIT "A"

Memorandum of Agreement between Mutual Gold Corporation, organized under the laws of the State of Washington, with its principal place of business at Spokane, and operating solely near Leevining, Mono County, California, hereinafter called the Seller, and Frank A. Garbutt, of Los Angeles, hereinafter called the Buyer, Witnesseth:

The Seller, through its duly authorized representatives, states to the Buyer that it requires further equipment to make said property properly profitable as follows:

(Defendants' Exhibit T—continued)

1. Bringing in electric power from Leevining or Tioga Lodge, 2½ miles.....	\$11,000.00
2. Electric hoist complete with motor and starter, etc.	7,000.00
3. Cage or skip and mine cars.....	1,500.00
4. Ball mill, 100 tons capacity, including motor, etc.	7,000.00
5. Classifier complete	3,000.00
6. Cyanide equipment, including tanks, motor and equipment capable of handling 100 tons daily	25,000.00
7. 6 inch pipe line, 5000 feet and installation thereof, to carry tailings to impounding dam	3,000.00
8. 500 cubic foot compressor, with motor, etc.	4,000.00
9. Additional building to house new machinery, including coverage for cyanide tanks	3,000.00
10. New bunkhouse and addition to cook house	1,500.00
11. Assay office and equipment.....	1,000.00
12. Enlargement of present ore bins at shaft and mill	1,000.00
13. Payroll, truck hauling, cement, sand, etc. for 60 days during installation of above.....	10,000.00
14. Payment due on property Nov. 1, 1938.....	10,000.00
<hr/>	
Total.....	\$84,000.00

The Seller and Buyer agree to co-operate in investigating and determining whether more suitable milling equipment than that above described and recommended by the Seller can be obtained and if, in the opinion of the Buyer, such proves to be the case, he may, at his option, alter the specifications of the milling equipment accordingly.

(Defendants' Exhibit T—continued)

The Seller agrees to sell to the Buyer and to forthwith transfer to him the contract owned by it dated July 13, 1932 with the Chandis Securities Company, M. N. Clark and Alice Clark Ryan for the purchase of the Log Cabin Mine and the group of mining claims contiguous thereto, subject to all modifications of said contract, which contract and its modifications are, for the purposes of description and otherwise, hereby made a part hereof; included in this sale are all other property, personal and real, belonging to the Seller now on or adjacent or tributary to, or used in connection with said Log Cabin Mine and its group.

The Seller agrees to forthwith transfer its title to said property, real and personal, to Frank A. Garbutt.

In consideration of this agreement and the transfer above set forth, the Buyer agrees to do the following things:

1. Furnish \$10,000 to make the payment due the owners of the Log Cabin Mine November 1st, 1938, before its due date.

2. Organize as soon as possible a corporation of such Capital Stock as he may desire and forthwith transfer to said Corporation all titles received by him hereunder as soon as said Corporation is qualified to hold same, issuing all of its Capital Stock fully paid therefor.

As a part of the consideration for the transfer of said title to it, such corporation shall contempora-

(Defendants' Exhibit T—continued)

neously therewith or immediately thereafter agree that it will not sell or part with the title to any real estate referred to herein nor any part thereof, without either (a) the written consent of the Seller herein; or (b) the vote of a majority of the directors of the corporation duly authorized or approved by its stockholders; or (c) its bankruptcy; or (d) a two thirds vote of its stockholders; and the By-Laws will carry a clause substantially setting forth this condition in the language above and that this provision of the By-Laws shall not be amended except by the vote of sixty (60%) per cent of the outstanding stock or a unanimous vote of the entire board of directors.

3. Forthwith transfer one-half of its total authorized Capital Stock less one controlling share, to the Seller, which stock shall carry with it the right to a full minority representation on the board of directors of the corporation to be formed.

4. Furnish additional funds to minimum of \$100,000, including the above mentioned \$10,000 to said corporation to be formed, as needed by it to equip said Log Cabin Mine with a mill of an estimated capacity of one hundred (100) tons daily or more, a suitable hoist and to bring in electrical power, and for such other equipment and supplies as appear advisable including payment of taxes and the protection of titles.

5. Take care of all further payments falling due to the owners of said Log Cabin Mine group amounting to \$120,000 in all.

(Defendants' Exhibit T—continued)

6. Proceed with the work of properly equipping said property as rapidly as conditions will permit unless prevented by weather, strikes or other circumstances not controlled by the Buyer.

7. At the Buyer's option to advance additional funds should such advances, in the opinion of the Buyer, become necessary or advisable.

8. Furnish the Seller with proper and detailed monthly statements of the operations of the Corporation to be formed.

9. The Buyer agrees to co-operate with the Seller in any reasonable way in protecting its and its stockholders' interest in order that the smallest shall receive benefits proportionate to the largest.

For all advances made by him the Buyer shall be entitled to be repaid out of any profits or funds available from the operation of said property or sale or other disposition of the property, but not otherwise.

When the Buyer has performed all acts hereinabove set forth which are obligatory hereunder he shall be deemed to have fulfilled this contract and his liability shall cease.

The Buyer may also terminate his liability hereunder at any time after furnishing the first \$10,000 specified herein by notifying the Seller of his desire so to do and by placing his fifty (50%) per cent of the stock plus the one controlling share obtained by the Buyer hereunder, in escrow with the Title Insurance and Trust Company or with any responsible bank selected by the Buyer with irrevocable

(Defendants' Exhibit T—continued)

instructions to deliver it to the Seller whenever and as soon as the money from net profits or from its dividends or from the Seller sufficient to repay the Buyer has been received by the trustee for the benefit of the Buyer. And should the Buyer (or, in event of his death, his estate) fail from any cause to perform his part of this agreement he hereby agrees to deposit said stock in escrow in the same manner as in this paragraph provided and under the same terms and conditions as though the Buyer were terminating his liability. Should said Buyer withdraw as above or fail to perform his agreement as above provided, the Seller shall have the right to elect a majority of the board of directors, and such board shall have the right to immediately elect new officers, both conditional upon (a) the repayment to the Buyer of the monies advanced by him, or (b) the securing of same by a first lien upon the assets of the corporation subject only to its contract of purchase of July 13, 1932, or, at the option of the Buyer he may elect at any time before or while said stock is in escrow to accept in full payment for all money advanced by him such pro rata of said stock as said advances bear to one hundred thousand dollars. While the Buyer retains such control he agrees to vote upon all matters arising as appears to the best interests of the corporation.

It is the intention of both the Seller and Buyer that in event of such withdrawal by the Buyer he shall be entitled to the return of his advances out

(Defendants' Exhibit T—continued)

of profits only or out of funds derived from the sale of said property or from the sale of the stock obtained by the Seller hereunder should the Seller sell the property or stock to third parties after having obtained title thereto by reason of the withdrawal of the Buyer.

This right to repayment shall extend only for such advances as are made in accordance with this contract and the Buyer herein shall not be entitled to repayment for any further or additional advances unless or until he has secured the written approval of the Seller thereto. In computing net profits actual operating expenses only shall be considered and no charge shall be made on account of officers' salaries, interest or capital expenditures.

While such stock is in escrow it shall be voted by the Buyer, and its dividends shall go to the Buyer until his advances have been repaid and any dividends received by him shall apply upon such repayment.

The Buyer, or his representatives, will consult at all reasonable times with the Seller before making any unusual or extraordinary outlays not contemplated herein and further agrees, insofar as his control of the enterprise is concerned, to use his best judgment in carrying on the operations contemplated.

In Witness Whereof the said Seller has hereby caused its name to be subscribed by its President thereunto duly authorized by its Board of Directors

(Defendants' Exhibit T—continued)

this 2nd day of September, 1938, and its official seal to be affixed, and the said Buyer has hereunto subscribed his name and affixed his seal as of the date aforesaid.

**MUTUAL GOLD
CORPORATION**

(Signed) By: J. E. STIEGLER

President

(Signed) FRANK A. GARBUTT

[Title of Superior Court and Cause.]

AMENDED REPLY

Comes Now the plaintiffs and reply to the amended answer in the above entitled cause and the so called affirmative defenses therein alleged.

As to the first so called further answer and affirmative defense plaintiffs reply,

I.

Deny the matters and things set forth and alleged in the first so called further answer and affirmative defense and the whole thereof. other and except that from July, 1932, until September, 1938, plaintiff J. A. Vance was a director and vice president of the Mutual Gold Corporation; that on August 6, 1938, at a meeting of the stockholders of defendant Mutual Gold Corporation a resolution was adopted, of which a copy is set forth in paragraph VI of said affirmative defense: that on or about September 2,

(Defendants' Exhibit T—continued)

1938, a purported contract, of which a copy is attached as Exhibit A to the amended answer, without authority therefor, was signed by J. A. Stiegler, wrongfully purporting to act in his capacity as president and by authority of defendant corporation.

As to the second so called further answer and affirmative defense plaintiffs reply,

I.

Deny the matters and things set forth and alleged in the second so called affirmative defense, set off and counter claim, other and except that defendant borrowed from plaintiffs the amounts of money alleged in said second so called affirmative defense, together with other sums and amounts totaling the full amount alleged in the complaint herein.

For a Further and Affirmative Reply to the further and affirmative matters alleged in the amended answer, plaintiffs allege that the pretended contract of September 2, 1938 was and is wholly without consideration and was not and is not authorized by the resolution of August 6, 1938, set forth in the amended answer, and was and is a part and in furtherance of a fraudulent plan to deprive plaintiffs of their assets whereby, for the advantage and enrichment without consideration of said Frank A. Garbutt and his associates, the names of whom are unknown to plaintiffs, defendant Mutual Gold Corporation, was brought, apparently as purported

(Defendants' Exhibit T—continued)

seller, but falsely and fraudulently in fact to agree, as stated on page 2 of said Exhibit A, "to forthwith transfer its title to said property, real and personal, to Frank A. Garbutt," and plaintiffs further allege; that said pretended contract was subsequently abandoned and repudiated by said Frank A. Garbutt and that no corporation was formed or organized or pretended to have been organized thereunder or pursuant thereto.

For a Second Affirmative Reply unto the amended answer, and each and every part thereof, the plaintiffs allege:

I.

That at the meeting at which the resolution of August 6, 1938, was adopted, and immediately prior to such adoption, and for the purpose of inducing the adoption of such resolution, Russell F. Collins and G. H. Ferbert, each a director of Mutual Gold Corporation and acting as such, stated and represented to the stockholders of Mutual Gold Corporation, in meeting assembled, that it was desirable that a wide discretion be given to the Board of Directors to dispose of the assets of the corporation, and that the Board of Directors would thereby be enabled to obtain a better disposition of the assets, and that such disposition would include protection to the creditors, including the production note holders (including the plaintiffs herein); said statements and representations were made with intent to thereby deceive and mislead the stockholders

(Defendants' Exhibit T—continued)

so that they would adopt said resolution, and they were deceived and misled thereby and thereupon adopted said resolution. Said statements and representations were made with no intention that the creditors or production note holders be protected or payment of their obligations provided for, and with the fraudulent intent to thereafter convey to Frank A. Garbutt without consideration the assets of the corporation, and intentionally disabled Mutual Gold Corporation from paying its creditors, including the production notes, and including therein the production notes in suit.

For a Third Affirmative Reply unto the answer, and each portion thereof, plaintiffs allege, by way of estoppel,

I.

That by the management contract, pleaded as Exhibit B to the complaint, J. A. Vance was to serve without compensation as manager and was to incur no personal liability for any matter or thing whatever which he might do for and on behalf of the defendant while acting as general manager of the defendant corporation, and was not to be liable for any mistakes or errors in judgment or any omissions of any character while acting as general manager of Mutual Gold Corporation.

II.

That from time to time, the management of the said J. A. Vance and his conduct and acts done as

(Defendants' Exhibit T—continued)

general manager were impliedly, and in part expressly approved and ratified by Mutual Gold Corporation, in that at the annual meeting of the stockholders of Mutual Gold Corporation held February 3, 1937, a vote of thanks was extended to him for his services on behalf of the Company; and at the meeting of the Board of Directors held October 9, 1937, a resolution was unanimously adopted thanking the said J. A. Vance for what he had done for the Company; that the Board of Directors at a meeting held February 19, 1938, approved the activities at the mine of J. A. Vance for the period from May 7, 1937, to December 12, 1937, said approval being in the following form:

“Mr. J. A. Vance presented a written report covering the activities at the mine from May 7, 1937, to December 12, 1937, when he left. Said report was duly read and submitted to the Board of approval before sending out to the stockholders. On motion duly made, seconded and carried, the report was ordered accepted.”

III.

That the management contract, Exhibit B attached to complaint, provided that the said J. A. Vance would employ M. J. Keily as mining engineer upon said property; that M. J. Keily was nominated and appointed by the owners as their representative to be employed by Mutual Gold Corporation at said mine to have supervision and direction of the development of said mine, and the

(Defendants' Exhibit T—continued)

operation of the mill and recovery of values thereat, and the authority of J. A. Vance as general manager was so limited that he did not have a free hand as such manager, but that by action and resolution of the Board of Directors of Mutual Gold Corporation, at a meeting held January 8, 1938, Keily was given complete charge to hire and fire men and complete responsibility as to the operation of the property; that any of the acts and things complained of as mismanagement were done upon the authority and with the approval of Keily and on account of all thereof the defendant, Mutual Gold Corporation, is now estopped and precluded to complain thereof, or to hold J. A. Vance responsible therefor.

Wherefore plaintiffs pray judgment as in their complaint herein.

O. C. MOORE and

W. H. ABEL

Attorneys for Plaintiffs.

State of Washington,
County of Spokane—ss.

O. C. Moore, being first duly sworn on oath, deposes and says:

That he is one of the attorneys for the plaintiffs and makes this affidavit for and on behalf and for the reason that said plaintiffs are and each of them is a non-resident of Spokane County.

(Defendants' Exhibit T—continued)

Affiant further states that he has read the foregoing reply, knows the contents thereof and believes same to be true.

O. C. MOORE.

Subscribed and sworn to before me this 24th day of June, 1939.

R. P. WOODWORTH,

Notary Public in and for the State of Washington,
residing in Spokane.

[Endorsed]: Filed June 26, 1939.

[Title of Superior Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled action having come on for trial October 5th, 1939, before the undersigned, one of the Judges of the above-entitled court, and the plaintiffs being present in court personally and by the officers of plaintiff corporation and represented by their attorneys, W. H. Abel and O. C. Moore, and the defendant being present by its officers and by its attorneys, D. B. Heil and E. D. Weller, and both parties having announced ready for trial, and it being stipulated in open court by respective counsel for plaintiffs and defendant that the trial of this cause should be consolidated for trial before the court with the case of J. A. Vance vs. Mutual Gold Corporation, No. 103068, in said court, and the

(Defendants' Exhibit T—continued)

court having heard the testimony of witnesses for plaintiffs and for defendant, and the argument of counsel, being fully advised in the premises, now makes the following

FINDINGS OF FACT

I.

That plaintiff, Vance Lumber Company, now is, and at all times herein mentioned was, a corporation organized under the laws of the State of Washington, and that it has paid its license fee last due the State of Washington.

II.

That defendant, Mutual Gold Corporation, now is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Washington.

III.

That at all times hereafter mentioned up to September, 1938, plaintiff J. A. Vance was a stockholder, a member of the Board of Directors, and a Vice-President of defendant company.

IV.

That about the year 1932 defendant as vendee acquired by contract of purchase certain mining property situate in Mono County, California, for

(Defendants' Exhibit T—continued)

the total purchase price of \$150,000, \$10,000 of which purchase price had been paid prior to August, 1936, and that the purchase contract as amended provided for the payment of \$10,000 November 1, 1937, and a like sum on November 1st of each year thereafter until November 1st, 1941, when the entire balance became due and payable. That said contract required that the vendee, defendant herein, should prospect and develop said mining property and that defendant had spent considerable sums of money up to August, 1936, in such prospecting and development work to the extent that its financial resources had become exhausted.

V.

That about August, 1936, defendant being in need of funds to continue development of said mine and for prospecting same, pursuant to authorization of the Board of Directors, borrowed approximately \$30,000 from plaintiffs herein and other stockholders of defendant corporation and delivered to the several stockholders by whom such loans were made, its notes designated by it as "production notes." That said notes were on a common form, differing only as to the amount of loan represented thereby, said form being as follows:

(Defendants' Exhibit T—continued)

“No.....

\$.....

“Spokane, Washington

“For Value Received, the undersigned, a Washington corporation, agrees to pay to the sum of..... Dollars, without interest, out of net production receipts accruing from the sale of ores from its mining property, before any dividends shall be declared or paid by it upon its capital stock, and in no other manner whatsoever, except that in case of a voluntary or involuntary sale of its mining property, any balance unpaid hereon shall be paid out of the proceeds thereof before any distribution shall be made to its stockholders.

“‘Net production receipts’ hereinbefore referred to shall be construed to mean such receipts as shall remain after deducting therefrom all of the costs of producing, handling and milling said ore, necessary corporation expenses and taxes, a reasonable sum of mine development, such sum as the Board of Directors shall determine may be necessary for the purchase and/or payment of necessary mining equipment, and payments on account of the purchase price of said mining property, by royalty or otherwise.

“All sums which the undersigned shall have

(Defendants' Exhibit T—continued)

for the retirement of this and similar certificates shall be applied pro rata upon the same.

“The execution of this certificate has been authorized by resolution of the Board of Directors.

“Dated this.....day of....., 1936.

“MUTUAL GOLD CORPORATION

“By

President.

“Attest:

.....

Secretary”

That plaintiffs loaned to defendant and hold production notes as hereinbefore described in the following amounts:

J. A. Vance	\$8000.00
Vance Lumber Company	6000.00
W. G. Pebbles	1000.00
Louise Woodward	1000.00

VI.

That plaintiff, J. A. Vance, as a condition for making such loans by himself and by the Vance Lumber Company, of which he was an officer and a large stockholder, required that he be selected as manager of defendant company to operate said mine, and pursuant thereto defendant entered into a contract with the said J. A. Vance as follows:

“This agreement, made and entered into this 29th day of August, 1936, by and between Mu-

(Defendants' Exhibit T—continued)

tual Gold Corporation, a corporation, party of the first part, and J. A. Vance, party of the second part, Witnesseth:

“That Whereas, the party of the first part is contemplating the raising of approximately the sum of \$30,000. to place its mining property, located near Mono Lake, California, in operation; and

“Whereas, the party of the second part has agreed to assist in the raising of said amount to the extent which he has heretofore advised the board of directors of the party of the first part; and

“Whereas, the party of the first part has agreed, if said fund is raised, the party of the second part shall serve as general manager under certain terms and conditions; now, therefore,

“It Is Agreed as follows, to-wit:

“That the party of the second part is hereby employed as general manager of the party of the first part, with full and complete authority for and on behalf of the party of the first part to expend the sum of \$30,000 to place the mine of the party of the first part in production and to pay such obligations which shall have been incurred by the company in connection with said property during the months of August and September, 1936.

“That the party of the second part shall remain as general manager of the party of the

(Defendants' Exhibit T—continued)

first part after the said mine shall have been placed in production and during the operation of said mine until such time as the said sum of \$30,000 shall have been fully repaid to parties advancing said funds to the party of the first part, in accordance with the terms of such agreement as shall be made by first party with parties advancing said funds.

“That the party of the second part shall serve without any compensation whatsoever, except that he shall be entitled to full reimbursement for all expenses which he shall incur in connection with his position as general manager, which said expenses shall be paid monthly.

“The party of the second part shall employ M. J. Keily as a mining engineer upon said property if he is able to make satisfactory arrangements with him; but if not, party of the second part shall have the right to employ such mining engineer as he may select with the approval of the board of directors of the first party.

“That in the event of the death, resignation or inability of the party of the second part to act as the general manager, those subscribing for the said sum of \$30,000 shall have the right to designate a new general manager and the party of the first part agrees to employ such general manager as may be designated; and in connection with the designation of such general manager, if those raising said funds are unable

(Defendants' Exhibit T—continued)

to agree in the selection of the general manager, those advancing a majority in amount of the funds shall have the right to designate the new general manager to be appointed in the place and stead of the said party of the second part.

“That the said funds so raised for the purpose of placing the said mine in production shall be placed in a special fund of said corporation and may be withdrawn only upon the check of the party of the second part for and on behalf of said corporation, or such other party as the party of the second part may designate; but in the event that the party of the second part shall designate any other person, except G. F. Ferbert or such other party as may be suitable to first party, to withdraw said funds, the party of the second part shall be responsible for the withdrawal thereof.

“That the party of the second part shall incur no personal liability for any matter or thing whatever which he may do for and on behalf of this corporation while acting under the terms of this contract, and as general manager of said corporation, and shall incur no personal liability for any contracts or obligation which he may incur for and on behalf of the party of the first part, while acting as general manager of the party of the first part, nor shall second party be liable for any mistakes or errors in judgment or any omissions of any character

(Defendants' Exhibit T—continued)
while acting as general manager of the first party as herein provided.

“In Witness Whereof, we have hereunto set our hands and seals the day and year in this instrument first above written.

(Signed) MUTUAL GOLD CORPORATION

By J. E. STIEGLER,

President.

(Signed) Attest: E. FUSON,

Secy.

First Party.

(Signed) J. A. VANCE,

Second Party.

“The foregoing contract is hereby approved by the following as directors of Mutual Gold Corporation, a corporation.

(Signed) J. E. STIEGLER

(Signed) W. L. GRILL

(Signed) RUSSELL F. COLLINS

(Signed) J. A. VANCE

(Signed) R. P. WOODWORTH

(Signed) FRED P. FREEMAN”

VII.

That operating under said contract said plaintiff, J. A. Vance, took sole charge of the said mine and the expenditure of the \$30,000, which was placed in a special fund in a bank at Bishop, California, subject only to his check and the check of others authorized by him. That at the time plain-

(Defendants' Exhibit T—continued)

tiff, J. A. Vance, took charge of operations at said mining property, there was on the property a small mill suitable primarily as a pilot mill for development purposes which said plaintiff Vance assured the Board of Directors of defendant company, from his knowledge and examination thereof, he could operate at a profit and repay therefrom the said production notes.

VIII.

That after making said contract said plaintiff J. A. Vance took charge of said mine and funds and proceeded to operate said mining property and mill ores extracted therefrom in said mill with the result that he received proceeds from mint returns of approximately \$40,000, all of which returns including monies derived from production notes he expended in the operation of the mine and mill and no net profits were derived from his operation of the mill with which to pay the production notes or any part thereof.

IX.

That plaintiff, J. A. Vance, continued the operation of said mine and mill under said contract until the spring of 1938 when all of the funds belonging to said company including the funds derived from the loans on production notes, the proceeds of mint returns and also considerable sums of money advanced by said plaintiff, J. A. Vance, and other stockholders of defendant company had been ex-

(Defendants' Exhibit T—continued)

hausted and the said plaintiff, J. A. Vance, ceased operations at said property and ordered said mill shut down.

X.

That immediately thereafter plaintiff, J. A. Vance, reported to the Board of Directors of defendant company that it would be necessary to place a mill on said property having a daily capacity of at least 100 tons in order that the same might be operated profitably.

XI.

That plaintiff, J. A. Vance, with a mining engineer by the name of Cole, examined a used mill located in the State of California having a purported capacity of 100 tons per day and recommended its purchase to the Board of defendant company. That he contacted various mining companies in an endeavor to interest them in taking over the development and operation of defendant's properties for an interest therein and after being unsuccessful in his attempt to interest any other companies therein, Lloyd Vance, son of J. A. Vance, acting on behalf of J. A. Vance and Vance Lumber Co., proposed to take over the operation and development of the properties of defendant company under a contract, which is in evidence herein as Exhibit A29 and made a part hereof as though written out in full herein.

(Defendants' Exhibit T—continued)

XII.

At a meeting of the stockholders of defendant company held at the office of the company on August 6, 1938, for the specific purpose among others of authorizing the Board of Directors to take action on the Lloyd Vance proposed contract or any other contract that might be advisable, a resolution was passed by the unanimous vote of more than two-thirds of the outstanding stock, plaintiffs all being present in person or by proxy and voting therefor, which resolution is as follows:

“Resolved that the Board of Directors of this corporation be and they are hereby authorized, empowered and directed to sell, lease, deal with, operate, exchange or otherwise dispose of, to any person, persons or corporation, desiring to purchase, lease, deal with, exchange, operate same, any part of or all of the assets of this corporation, at such time or times, for such price and upon such terms and conditions, for cash or otherwise, including the exchanging for shares in another corporation, domestic or foreign, as they in their absolute discretion deem expedient, advisable or desirable, and to perform any other acts in this connection which in their judgment they may deem necessary or advisable.”

XIII.

That pursuant to said resolution the Board of Directors of defendant company through its officers

(Defendants' Exhibit T—continued)

on September 2, 1938, entered into a contract with one Frank A. Garbutt of Los Angeles, California, to take over the development and operation of defendant's mining property, said contract being in evidence herein as Exhibit A10 and made a part hereof as though set out in full herein.

XIV.

That thereafter, to-wit, on or about December 17, 1938, another and further contract was entered into between defendant corporation, the said Frank A. Garbutt and Log Cabin Mines Company, a corporation organized under the laws of the State of California, and pursuant to the terms of the first contract, Exhibit A10 above referred to, wherein for valuable consideration the said Log Cabin Mines Company undertook to become the operating company in carrying on the development and operation of said mining property, said contract of December 17, 1938, being in evidence herein, marked Exhibit A17 and made a part hereof as though set out in full herein.

XV.

That the said contracts hereinbefore referred to were made by the Board of Directors of defendant company with the purpose and intent that out of the net proceeds of said mining property defendant company would pay all its outstanding indebtedness including the production notes hereinbefore described and that on August 23rd, 1939, in order

(Defendants' Exhibit T—continued)

that there might be no question as to their intention the said Board of Directors of defendant company entered into a supplemental agreement with the said Frank A. Garbutt and Log Cabin Mines Company specifically providing that after the repayment of the amounts advanced by the operating company for labor and machinery and any other expenses as in said contract provided that the net proceeds of said mining property belonging and accruing to defendant should first be paid to the discharge of the said production notes and any other indebtedness of said defendant, which agreement was admitted in evidence as Exhibit A35 and is hereby referred to and made a part hereof as though set out in full herein.

XVI.

That the said Log Cabin Mines Company and the said Frank A. Garbutt have ever since the making of said contracts diligently and faithfully expended labor and money in the development of the said mining property installing thereon a new mill capable of milling in excess of 100 tons of ore per day, together with other proper machinery and equipment so that the total expense of equipping and developing said property by the said Log Cabin Mines Company and Frank A. Garbutt since the making of said contract has exceeded the sum of \$100,000.

From the foregoing Findings of Fact, the court makes the following:

(Defendants' Exhibit T—continued)

Conclusions of Law

I.

That defendant corporation has not put it out of its power to pay the production notes out of net production receipts accruing from the sale of ores from its mining property, nor has it jeopardized or interfered with the rights of its creditors.

II.

That plaintiff, J. A. Vance, by his conduct and acts terminated his contract as general manager of defendant company and also abrogated same by his inability to carry out the terms of his contract by placing the mine in profitable production.

III.

That plaintiffs by voting for the resolution under which the Board of Directors of defendant company entered into the contracts referred to in the findings herein estopped themselves from thereafter attempting to repudiate or set aside said contracts.

IV.

That the Board of Directors of defendant company in authorizing the execution of said contracts for the development and operation of its mining properties acted without fraud and in the exercise of their sound discretion.

V.

That the due date of the production notes of plaintiffs herein has not been accelerated by the acts of

(Defendants' Exhibit T—continued)

defendant or its officers and that said notes are not now due and payable.

VI.

That defendant is entitled to a judgment dismissing the action of plaintiffs and to have judgment against plaintiffs for its taxable costs herein.

Done in Open Court this 14th day of February, 1940.

CHAS. W. GREENOUGH

Judge.

Presented by:

E. W. WELLER.

[Endorsed]: Filed Feb. 14, 1940. Frank C. Nash, Clerk.

[Title of Superior Court and Cause.]

JUDGMENT

The above entitled action having come on for trial before the undersigned one of the Judges of the above entitled court, and plaintiffs being personally present and represented by their attorneys, W. H. Abel and O. C. Moore, and the defendant being represented by its officers and by its attorneys, D. B. Heil and E. D. Weller, and the court having heard the evidence adduced by witnesses for plaintiffs and for defendant, and the argument of counsel, and having heretofore made and entered its Findings of Fact and Conclusions of Law, and it

(Defendants' Exhibit T—continued)

appearing that the plaintiffs made and filed herein their bond conditioned for the payment of any judgment for costs that might be awarded against them with United Pacific Insurance Company, a corporation, authorized to execute bonds in the State of Washington, as surety, up to the sum of \$200, now therefore, it is

Ordered, Adjudged and Decreed that the above entitled action be and the same is hereby dismissed without prejudice. It is further

Ordered, Adjudged and Decreed that the defendant have and it is hereby granted judgment against plaintiffs, J. A. Vance, Vance Lumber Company, a corporation, W. G. Peebles, and Louise Woodward, and each of them, for its taxable costs and disbursements herein incurred and further for judgment against United Pacific Insurance Company, a corporation, for the amount of such taxable costs and disbursements in no event to exceed the sum of \$200 against said corporation.

Done in Open Court this 14th day of February, 1940.

CHAS. W. GREENOUGH

Judge.

Presented by:

E. D. WELLER.

[Endorsed]: Filed Feb. 14, 1940. Frank C. Nash, Clerk.

LLOYD J. VANCE,

called as a witness on behalf of Plaintiffs in rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name?

A. Lloyd J. Vance.

Q. By Mr. Abel: Are you the son of J. A. Vance? A. Yes.

Q. And you live at Seattle? A. Yes.

Q. You were a director of Mutual Gold Corporation on June 6, 1939, were you? A. Yes.

[511]

Q. All right. What was said on the subject of a quiet title suit by Mr. Garbutt, if anything?

A. There wasn't anything said about a quiet title suit, as I recall. Mr. Grill started reading a written document that was supposed to relate what this meeting was about, apparently had been prepared beforehand, and he read it rather hurriedly; and, as I understood it, in this statement he said that Garbutt was going to bring a quiet title suit and that they were deciding—that the board had decided not to fight it; and a vote was taken and I opposed it, the only dissenting member. [512]

Cross Examination

Q. By Mr. Hinckle: Mr. Vance, did you say that Mr. Russell Collins was there as a director at that time? A. At which meeting?

(Testimony of Lloyd J. Vance.)

Q. The meeting of June 6th, 1939?

A. Why, it seems to me that he was there.

Q. The minutes which are now in evidence show that the directors present were J. E. Stiegler, G. H. Ferbert, W. H. Grill and Lloyd Vance. In view of that do you wish to amend your statement?

A. Well, I don't recollect.

The Court: Doesn't the record speak for itself on that?

Mr. Abel: Yes; and we do not deny the record on the subject.

Q. By Mr. Hinckle: Upon the question of your understanding of the resolution, the resolution, according to the minutes, was:

“It was moved and seconded that inasmuch as Mutual Gold Corporation has no interest in the mining claims in California at this time that the company makes no defense to the action of Mr. Garbutt brought to quiet title to said claims in the Log Cabin Mines Company.”

Did you hear that word “brought” or did you notice that when it was read?

A. No; I didn't. It was read very hurriedly.

[515]

JOSEPH A. VANCE,

called as a witness on behalf of plaintiffs in rebuttal, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. By Mr. Abel: Mr. Vance, did you hear the testimony of Russell Collins in substance and effect that you told him in October, 1938, at the mine or Leevining or in that vicinity, "to hell with the small stockholders of Mutual Gold Corporation"?

A. I never said such a thing.

Q. No. Did you hear his statement?

A. Oh, yes.

Q. Did you at that time, place or occasion, or at any other time, place or occasion, make such statement or statement of similar import? A. No.

Mr. Abel: That will be all.

The Court: I would like to ask Mr. Vance some questions if I may.

Mr. Abel: Yes.

Q. By the Court: Mr. Vance, in looking over the exhibits during the night I find here a number of exhibits, starting in with Exhibit B, a letter to the stockholders of Mutual Gold. Who prepared that letter for you?

A. Well, I prepared it with the approval of Mr. Abel. [518]

Q. Mr. Abel has been your attorney throughout all these disputes in the Mutual Gold, has he not?

(Testimony of Joseph A. Vance.)

A. Oh, he has been our attorney for 25 years I guess.

Q. And you at all times consulted him concerning these problems?

A. Well, most of the time.

The Court: Now, this letter, did Mr. Abel—maybe you can answer that, Mr. Abel.

Mr. Abel: Yes, your Honor; I think I can, your Honor. I would like to state that my first acquaintance with this matter dated from August 13, 1938, and that I attended the directors' meeting on that date when the DeMille proposal came in.

The Court: And did you help prepare or approve the various letters that Mr. Vance sent out to stockholders and the production note holders?

Mr. Abel: Yes, your Honor; that Mr. Vance sent out. I had nothing to do with nor did I know of until after their issuance the Bateham notice that was sent out.

The Court: I note in these exhibits—I don't remember just which one, B, C or D, along in there—a recognition, at least knowledge, of the Garbutt contract and the provision for the forming of a new corporation.

Mr. Abel: Yes, your Honor.

The Court: So that the minority stockholders were not ignorant of that situation? [519]

Mr. Abel: That depends upon the date, your Honor.

(Testimony of Joseph A. Vance.)

The Court: Well, let us see if I can find one here.

Mr. Abel: I was not at the August 6th meeting.

The Court: Did you prepare or have anything to do with the letter of September 13th, signed by Mr. Woodworth and a number of stockholders?

Mr. Abel: No, your Honor; I did not have anything to do with preparing that.

The Court: May I call your attention to this and ask you whether or not—and I am asking you because you were representing the minority group and the claim has been here, at least the facts have been brought out, that the majority group, as we will call them for the sake of convenience, Garbutt and the majority of the board of directors, had in their various communications kept in the dark various matters of the Log Cabin.

Mr. Abel: Yes, your Honor. We found it out in a very fragmentary way.

The Court: For instance, this part here:
(Defendants' Exhibit G.)

“We, as the stockholders of the Mutual Gold, therefore, after being fully advised in regard to said contract, as well as the Lloyd J. Vance proposed contract, believe it our duty to advise you that the Garbutt contract contemplates the immediate transfer of all of the assets which the Mutual Gold now owns [520] in exchange for stock in a new corporation to be formed by Garbutt; that the said contract is, in our

(Testimony of Joseph A. Vance.)

opinion, woefully lacking in covenants binding the Garbutt Corporation. To part with all of our holdings, as contemplated by the Garbutt contract, without binding such corporation to more definite performance is dangerous and might result very disastrously to the stockholders of the Mutual Gold. We are, therefore, definitely opposed to the Garbutt contract and believe that it should be rejected.”

Now, there is a letter signed by numerous stockholders.

Mr. Abel: What is the date of the letter, your Honor?

The Court: September 13, 1938.

Mr. Abel: September 13, 1938.

The Court: And I was wondering if you had any knowledge of the contents of that letter?

Mr. Abel: Yes, your Honor, but I did not learn,—I did not see or learn of the contents of the contract until after it was executed.

The Court: Well, of course, this is after the date of the execution of the contract.

Mr. Abel: Yes.

The Court: And here is another letter dated September 20, 1938, marked Defendants’ Exhibit E, to the stockholders, signed by Dunn, Peebles, and others. Did you prepare that [521] letter?

Mr. Abel: No, your Honor. I did not represent the—I think I know who did prepare it, but I think

(Testimony of Joseph A. Vance.)

I knew what was in the letter, anyway. And I mean by that at the time.

The Court: And the letter of January 30, 1939, marked Defendants' Exhibit F, signed by "A. P. Bateham." Did you prepare that letter?

Mr. Abel: No, your Honor. I had nothing to do with that.

The Court: But you were aware of the contents at or about the time it was sent out?

Mr. Abel: That was dated January 30th, was it?

The Court: Yes.

Mr. Abel: I did not learn of that until February 3rd or 4th after it was issued. I learned of it at Spokane either the evening of the 3rd or the morning of the 4th of February, which I think was the date of the meeting.

The Court: Here is a letter that is undated, but has a pencil notation on it "Sent about 9/12/38", Defendants' Exhibit B, signed by "J. A. Vance", a rather lengthy letter. Did you prepare that letter?

Mr. Abel: No; I did not prepare that letter, your Honor. I was furnished with a copy within a day or so of the date it was sent out.

The Court: That is all.

Mr. Hinckle: I have no cross examination. [522]

The Court: That is all, Mr. Vance.

Mr. Abel: Your Honor, I think under the circumstances I am almost required to take the stand. I do not like attorneys taking the stand, myself.

[523]

W. H. ABEL,

a witness on behalf of plaintiffs in rebuttal, being first duly sworn, testified as follows:

The Witness: I desire to slightly correct my statement of a little while ago. I represented some of the production note holders, not all of them. I represented Mrs. Woodward, Mrs. Woodworth, W. G. Peebles, J. A. Vance and the Vance Lumber Company.

My representation of the minority stockholders, if they may be called such, arose and existed only to a limited extent. The stockholders' meeting was called to be held on September 24th at Spokane to pass upon, ratify, or reject the Garbutt contract of September.

The Court: Which agreement was cancelled.

A. Yes; that was cancelled. There had been an active canvassing of stockholders and a letter to which the Court has called our attention, I think of September 12th, had gone out to the stockholders and the campaign was so vigorous that the meeting was called off. We appeared at the office of Dr. Collins, the brother of Russell Collins, which was the company office of Mutual Gold Corporation, on the morning of the 24th of September. Mr. Collins was present—I mean Dr. Collins was present, and Mr. Weller, the attorney for the company, Mrs. Fuson also was present. There were a number of us there, maybe 15 or 20 stockholders. O. C. Moore was present and Mr. Woodworth was present. And we [524]

(Testimony of W. H. Abel.)

requested an opportunity to see the proxies that had been sent in for the meeting and Mrs. Fuson, on advice of Mr. Weller, declined to permit us to see the proxies.

Those present adjourned to the office of Mr. Bateham and organized the Stockholders' Protective Committee contemplated. I was not retained by that committee. My name was, however, signed to the complaint in the quiet title suit later brought by Bateham in Spokane County. I did not prepare the pleadings in that case and did not participate nor was I present, but, as I stated, my name did appear upon the complaint, but there was no relation other than as stated and no contract of employment or retainer.

Q. By the Court: At none of these meetings, if I remember correctly, directors' meetings that you attended, was Mr. Garbutt present?

A. Not any. I think I would like to say, your Honor, I have a clear memory of the meetings which I did attend. The first meeting that I attended was August 13th, at which the DeMille proposal came before the board. The persons who submitted it were Russell Collins and G. H. Ferbert. That was the first time I had ever met Ferbert, Stiegler, Cole, who was present, the engineer, Mr. Hickcox, I think was present. I had met him once before, some years before.

Q. Did you prepare the Vance Proposal?

(Testimony of W. H. Abel.)

A. Yes; I prepared that, your Honor, but I prepared [525] that as attorney for——

Q. Mr. Vance? A. ——for Lloyd Vance.
[526]

PLAINTIFFS' EXHIBIT 98

Seattle, Washington

August 12th, 1938

Board of Directors,
Mutual Gold Corporation,
401 Fernwell Building,
Spokane, Washington.

Gentlemen:

I herewith submit the following proposition with respect to your holdings and property situate in Mono County, California.

I will, forthwith upon your acceptance of this offer and my proposition as herein contained, organize a corporation under the laws of the State of Washington having a capital stock of \$162,500.00, divided into 650,000 shares of common stock of the par value of 25 cents each. Such corporation shall be known as the Mono Lake Company, or by such other name as I may decide upon. Articles of Incorporation shall provide that the amount of paid in capital with which the cor-

(Testimony of W. H. Abel.)

poration will begin business shall be \$70,000.00. Such corporation so formed by me is to take over all of the mining property and equipment of your Corporation and to operate the same under the proposed terms and agreements as set forth in the memorandum of Agreement hereto attached and made a part hereof, and your acceptance of this offer will be an agreement by you to execute such agreement forthwith upon the completion of the organization of such corporation, subject, of course, to such changes as may be mutually agreed upon prior to the execution thereof.

In further explanation of the Agreement hereto attached, I have made arrangements with Mr. R. J. Cole, Mining Engineer, who recently made an examination of the property for your Company, and whose report you have, to act as superintendent in complete charge of operations, and Mr. Cole has agreed with me to so act for the new corporation for a period of at least one year, and it is my intention to use my best efforts to have Mr. Cole continue in such capacity as long as his services may be secured and be satisfactory to you and the Operating Company.

It is understood, however, that no personal liability of any kind, character or description shall rest upon me other than as to the forming of such corporation as herein contemplated, and that any and all liability with respect to carrying out the terms of the said contract, after the organization of

(Testimony of W. H. Abel.)

said corporation and the execution of the said contract shall be upon the corporation so formed, and not upon me.

Respectfully submitted,

LLOYD J. VANCE

c/o Vance Lumber Company,

Joseph Vance Building,

Seattle, Washington.

Q. Mr. Abel, before the recess you testified that the knowledge of contracts came to you as attorney for certain minority stockholders in a fragmentary way. I wish you would please explain that statement.

A. We found them out always at later dates, with very much difficulty in finding them out. I went to the expense even of retaining a lawyer at Bridgeport in Mono County to watch the records to see if anything went on file. The original De Mille proposal was copied and we were supplied with a copy as of the 14th of August. The subscribed contract was not made available to us until the morning—I may be mistaken as to one morning—on either the 22nd or the 23rd of August—no; of September, just before the [530] meeting of stockholders to ratify was to be on the 24th of September; and it was either one day or two days before that we saw that contract for the first time.

(Testimony of W. H. Abel.)

The contract of October 31st—I was wholly unaware, and I was trying to watch—I was wholly unaware of the contract of September 22nd. The deed to Mr. Garbutt of September 21st was not filed of record until November. We learned that he had a deed and opportunity to see that deed was denied us on the 27th of September. On that date Mr. Garbutt told us he would not take any position as to whether he claimed as owner or otherwise, and we could not see the instrument; and we did not see the instrument until after it was filed.

The contract of October 31st was not known to me, anyway, until I took Mr. Garbutt's deposition the following August. The contract of November 1st did not come to my attention at least until the following August.

The contract of December 17th was the first intimation—and I was on the lookout to get information—was not until either the—it was some time after the 10th of January that Mr. Grill supplied us with a copy.

The quiet title suit in California, the first intimation of any kind that I had of it was when the answer in this case came in. [531]

Cross Examination

Q. By Mr. Hinckle: When did you first come to Los Angeles to confer with Mr. Garbutt and others?

(Testimony of W. H. Abel.)

A. On the morning of September 26th, 1938. We left—I would like to say that we left Spokane, we drove from Spokane to Portland in order to catch the train to be present upon the 26th.

Q. At that time you knew all about the contents of the Garbutt contract, did you not?

A. I had a copy of the Garbutt contract which I had received a day or so before, that is, a day or so before the Spokane meeting, the stockholders' meeting which was to have been held on September 24th.

Q. What did you say was the first directors' meeting you attended? A. August 13.

Q. Mr. Vance was a director of the board of the Mutual all that time, wasn't he?

A. Until he resigned, which was, I think, on September 19th. [532]

Q. By the Court: Did you prepare this letter that is marked Plaintiff's Exhibit 98, in which the proposal was modified, in which Mr. Cole is to be—

A. Oh, no. I did not prepare that, your Honor.

Q. You had knowledge of its contents?

A. Oh, yes. It was discussed at the August 13th meeting to overcome the objections to J. A. Vance.

[533]

J. R. STURGEON,

called as a witness on behalf of plaintiffs in rebuttal, having been previously duly sworn, was examined and testified as follows:

Direct Examination [534]

Q. But did you remain at the mine and mill after the mill quit running in '38 under Vance?

A. Yes, sir.

Q. What was the condition of the mine as to cave-ins at that time?

A. Well, the only cave-in that was there at that time was on the 125 level.

Q. What were the dimensions of the cave-in?

A. Well, the main working drift was closed for about 50 feet.

Q. And as to whether or not that was the condition when the mining operations were resumed under Mr. Garbutt? A. It was. [535]

A. Well, the expense of timbering and removing the cave, the labor of that.

Q. Well, what would be the cost of it?

A. Oh, I would say at that time it could be removed for \$10 a foot.

The Court: How much?

A. \$10.

Q. By Mr. Abel: And there were 50 feet?

A. I think it could have been cleaned out for \$500 at that time. I couldn't say what the cave was after.

(Testimony of J. R. Sturgeon.)

Q. By the Court: You heard Mr. Garbutt's general description of this mine as to being broken up. Is that true? A. Yes, sir.

Q. And the tendency to cave in?

A. Yes, sir.

Q. Has that been one of the problems up there?

A. It has. The ground is very broken up. [536]

J. R. Sturgeon Recalled

Further Direct Examination

Q. By Mr. Abel: As to whether this mine is an exception, or is it like many mines, in respect to the problem of cave-ins?

A. Well, I would say that there is several mines that I worked in with that condition, broken up country.

Q. Were there any cave-ins while you were working for Garbutt there?

A. No, sir.

Q. There were none?

A. Not while I was there.

Q. By the Court: Did all the tunnel work have to be timbered?

A. Practically all of it; yes, sir.

Q. By Mr. Abel: And lagging?

A. Yes, sir.

Q. Installed, too? A. And spiling. [537]

M. F. HALEY,

recalled as a witness on behalf of plaintiffs in rebuttal, having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. By Mr. Abel: What is Exhibit for Identification 97? A. 97?

Q. Exhibit 97. That is the number of the exhibit. What is the paper?

A. That is a receipt that I was requested to sign with their bookkeeper that had been put in as chief accountant at the mine, a receipt for my wages.

Q. Who was "E. S. S."?

A. This is Mr. Sherwood.

Q. He was the bookkeeper at the mine?

A. Yes, sir.

Q. When did you get that paper?

A. I got it on that date.

Q. What date?

A. It was fourth month, 15th day, '39.

Q. April 15, 1939? A. Yes, sir.

Q. It bears the signature of "Mutual Gold Corporation, employer." You stated that up to that time your statement of wages and deductions were always under that signature?

A. Yes, sir; they were. [539]

Q. "Mutual Gold Corporation, Employer"?

A. As far as I can remember back.

(Testimony of M. F. Haley.)

Mr. Abel: I offer the exhibit in evidence, identification 97.

The Clerk: Exhibit 97. [540]

Q. With respect to the cave-in on the 125-foot level what were the dimensions of the cave-in at the time you quit working under the Vance management, I think you said in May, 1938?

A. 1939.

Q. 1938.

A. Oh, for Vance; yes. Well, the extent, there was a caved place there right close to the mill, I should say about 60 feet from where the place was graded for the concentrating tables, and that was—

Q. The precise location is not important, but its size and dimensions is the thing.

A. The diameter of that at that time, even up until the time that I left there, for that matter, was about, I would say, about 40 feet, maybe 50 feet in diameter, and possibly 20 to 30 feet down to where it had settled.

Q. The surface of the earth had just settled down?

A. Yes; settled down.

Q. Sort of a sump hole, as it were?

A. Yes, sir. [541]

Los Angeles, California,
Friday, March 21, 1941, 2:00 P. M.

Mr. Abel: May it please the court, I owe it to the court and to myself to correct an error as to dates in my testimony, if I may do that at this time.

The Court: Certainly.

Mr. Abel: The Garbutt contract came to my attention more than two days earlier than the contemplated meeting of stockholders on September 24th. I find that it came to my attention on the 9th day of September and was followed by the undated J. A. Vance letter which was sent out on or about the 12th day of September. [549]

CROSS-COMPLAINANT'S EXHIBIT U

Frank A. Garbutt
Suite 712 411 West Seventh Street
Los Angeles, California

July 8, 1940.

Directors,
Mutual Gold Corporation,
Mr. J. E. Stiegler, President.

Gentlemen:

I made you a detailed report on January 8th, 1939 and another upon January 8th, 1940.

You have also been kept in daily touch with the conditions at the mine by copies of many of the

(Cross-Complainant's Exhibit U continued)

routine letters which not only give details of operations but also have a more or less personal touch that serves to acquaint you with what I am trying to accomplish in building an organization for your protection, and some of the difficulties of accomplishing it.

It is the popular impression of the non-professional investor that all you have to do to operate a mine successfully is to employ a manager or, perhaps, only an engineer and turn the business as well as the technical details over to him and your troubles will be over.

The average so-called mining engineer, even though he possesses a proper technical education, is usually a notoriously poor business man; competent mine managers are about as scarce as hens' teeth and, strange as it may seem, the boards of directors of mining companies usually do not have much knowledge of mining although they may be good business men.

This is not vital if they are successful (which is not usually the case) in securing competent technical guidance and efficient local operative management.

No enterprise is safe that depends upon the ability, continuity, honesty and the knowledge of one man and not the smallest part of my task is to endeavor to build an organization that will function properly, come what may, and become independent of individual vagaries and the uncertainties both of life and permanency of employment.

(Cross-Complainant's Exhibit U continued)

As a foundation for this the Mutual Gold Corporation is particularly fortunate in having a Board of Directors, the majority of whom have had considerable experience in mining matters as well as in business, legal and administrative affairs and who have demonstrated an unselfish devotion to the stockholders' interest entirely devoid of any selfish personal motives.

It becomes readily apparent to their associates when directors, influenced by greed or hope of personal gain, grab for some advantage and put their own interests above those of the stockholders.

The experience of your Board of Directors is invaluable to you and the Company. Because of their acquaintance with the early affairs of your Company it could not be replaced and this familiarity has been added to as rapidly as possible by close contact and co-operation with this office. In this way you also become of increasing importance to me and to the "Log Cabin," the success of which depends upon our combined effort and judgment at this time and in the future.

It may very well transpire that your knowledge of the affairs of the Company may be the best protection that my estate will have in the future so that I am not entirely unselfish in desiring that you know all that there is to be known about the business and welcome any advice you want to give and reply to any questions that you may desire to have answered, and this is one of my reasons for this rather lengthy preamble.

(Cross-Complainant's Exhibit U continued)

It is as essential that you should be acquainted with, and be qualified to pass upon our organization at the mine as it is that you should be familiar with the business affairs of the Company.

You may have wondered at the patience I have shown in the past and my apparent procrastination in dealing with some of our personnel problems as well as my impatience in others. In explanation, let me state, that our staff at the mine, like your Board of Directors, improves with age and experience.

Men such as we might like to employ for our various jobs do not exist at any price that we could afford to pay and I believe that the men we have should be, by previous experience with us, better qualified than any new comers that might be available. They have demonstrated an ability and a loyalty that is remarkable under all of the discouragements that I and conditions have subjected them to and it has cost some money to acquaint them with our affairs. Even if the best men in the world came in to take their places, they would have to learn all that our men now know and some of that can not be learned except as the work was in progress and by going through what we have gone through.

To put it another way, we must create men for our jobs. It is not practical to find them already made. Our organization is apparently gaining strength and its strength will be our strength, especially in a long, hard pull.

(Cross-Complainant's Exhibit U continued)

Now to our physical affairs in which you are more directly interested. Briefly stated, our matters have not progressed entirely to our liking, mainly because the grade of our ore has averaged less than we had reason to expect and because, also, the quantity of ore that it would pay to mine and mill had been heretofore rather optimistically guessed at rather than scientifically estimated. However, notwithstanding these facts, we have made some progress.

We have finally made the payments of ten thousand dollars due to the owners November 1st, 1939, borrowing \$5000 from the bank to aid in so doing.

Our assessment work was all done and proper notices thereof prepared by our attorney and filed at Bridgeport.

We have taken no steps to patent additional ground mainly because of lack of funds but partly from lack of time to give it the personal attention necessary to save expense.

We have put our water rights and water supply into the best possible shape and are doing the same with the water system itself. This work should be practically completed and tested well before the coming winter. We will have ample water for our present capacity of 110 tons of ore daily and expect to have enough water for 150 tons and by recovering some of the water can, in all likelihood, provide enough for 250 tons daily.

The County has accepted the road from the Ranger Station to our property as a County road and

(Cross-Complainant's Exhibit U continued)

is saving us considerable expense by keeping it in repair. This is quite an advantage as we have not been able to proceed with the building of our new road on account of lack of funds. We have expended about \$125.00 on surveys on this road and are getting bids on its construction preparatory to building it when able.

We installed a two and a half inch tailings line of extra heavy pipe in place of the two inch line as necessitated by the increased capacity of our new mill. This increase of tonnage pumped decreased the cost per ton of our tailings pumping very materially. The two inch pipe in the original line (which was as large as that tonnage permitted) was salvaged and used in other lines at its full value.

Last winter, due to the freezing of our tailings water at the tailings pond, the accumulation of ice was such that a small portion of our slimes escaped and, during the spring melt, found its way via Sadie Williams Creek to Leevining Creek instead of via Andy Thompson Creek to Tioga Lodge as formerly during the Vance regime. This, however, did no material damage although it required some quick thinking and quick work by the mine staff and our friends in Leevining to install about a thousand feet of six inch line at our expense to do away with the contamination of the water supply of Leevining. The Fish and Game authorities also registered objections but, being satisfied that we

(Cross-Complainant's Exhibit U continued)
were doing everything possible, they made us no trouble.

We can consider ourselves fortunate that we had no cyanide to contend with and it is hoped that any recurrence can be prevented, although with drinking water on both sides of us, this will always be a problem for even if we pipe our tailings or waste water to the Lake there will always be the possibility of a break in the line.

I am happy to say that as yet there has been no considerable movement of your "hillside tailings" as Mr. Collins feared, and as far as I know, no material damage has ensued. While protecting myself against this eventuality I did not share his apprehension.

This year we experienced an unforeseen condition that did considerable damage by causing surface water to seep into the ground to our lower levels resulting in serious caves. According to John Simpson, our Superintendent, this was caused by the fact that during our past warm winter the surface of the ground at this point was not frozen as it usually is when the spring run-off occurs. While Mr. Simpson minimizes this loss and thinks that it could not have been prevented, and that we can recover all of the ore temporarily lost, I am inclined to not agree with him. I estimate the loss as at least \$15,000 and believe it is much more but think that the condition can be ameliorated in the future. This is being investigated and such steps

(Cross-Complainant's Exhibit U continued)

as seem appropriate will be taken to more rapidly drain the surface in the future.

We were not able to use the old stamp mill for any useful purpose, and as it was in the way, it is being dismantled and offered for sale. I have advertised it and shown it but so far we have not been able to obtain any offers. These efforts to sell were commenced last year while it could still be seen in operation but we have not been able to obtain an offer although we would gladly sell it for a thousand dollars: I recently had it examined by the dealer from whom Mr. Vance bought it, together with some of the other old machinery, and have him looking for a buyer but he informs me that there is very little likelihood of our being able to make a sale of a mill of this kind as there is no demand for it.

Incidentally, he stated that our present equipment was modern and fine and expressed his surprise at its compactness and capacity. He also wrote: ". . . Want to say in closing that the operation and class of mill installed at the mine could not be more efficient, it is fine."

Russell Collins is still in the Company's employ. He is, as you might say, the watch dog of the stockholders. We recently gave him leave of absence to attend to some of his business in the North during which time, we are informed, he was sued by Vance for \$10,000, for damages charging malicious publication with intent to (quoting from Vance's Complaint)—

(Cross-Complainant's Exhibit U continued)

“ . . . provoke plaintiff to wrath, expose him to public hatred, contempt, obloquy and ridicule, deprive him of the benefit of public confidence and social intercourse, injure his character, blacken his reputation, impute fraud and dishonesty, and reflect shame upon him, injure and destroy his business as stockholder and creditor of Mutual Gold Corporation, deprive him of the confidence of the stockholders, officers and board of directors of Mutual Gold Corporation.”

However this may be, Russell countered by suing Vance for an accounting, alleging a partnership in the promotion of the Mutual, and some of my attorneys, who have examined the pleadings, tell me that they would rather have Russell's suit than Vance's. At any rate we will probably learn just how Vance got 75,000 shares of the Mutual promotion stock and also whether he paid for the rest of his stock the same price that other stockholders paid.

We have added to the equipment at the mine as sparingly as was possible with economical operations. Among the equipment bought were three hoists, one tugger and two slushers, used in moving ore in the mine and from the dump. They have saved their cost already.

As to the “Stockholders” suit filed in the Federal Court in Los Angeles by Abel, Moore & Anderson, January 10, 1940, purporting to represent Helen

(Cross-Complainant's Exhibit U continued)

M. Sutherland, 333 shares, and Charles W. Sutherland, 333 shares, M. I. Higgins, 333-1/3 shares, and Maybelle Higgins, 333-1/3 shares, and Helen Maude Lorenz, 500 shares as Plaintiffs. Investigation showed that these plaintiffs who are very small stockholders, owning 1833-2/3 shares out of 2,641,182 shares issued (about 1/14 of one per cent) knew very little about it and apparently wished they knew still less.

The defendants, other than the Chandis Securities Company, have alleged in their answer that Vance was behind this suit, was paying the expenses, and had induced the plaintiffs to bring the action. The plaintiffs moved the Court to strike out this allegation, but the Court refused to do so. Fortunately, a plaintiff in such an action could not withdraw if he wanted to. This suit also named the owners as defendants and it has not helped our standing with them.

Vance, as you already know, is "not doing so well" with this suit. They hired an attorney here and have gone to some expense. I am told Vance made the statement that he would spend \$50,000 to win this lawsuit. He must think that lawsuits can be won by money. In my opinion, if he spent \$500,000 he couldn't win this one. However, you never can tell about a law suit. Nevertheless, we will not let him dismiss this action. We want to see it tried and see where it will lead. Also, he has made charges of fraud that have no foundation in fact and we will insist that this issue be tried. It seems to me

(Cross-Complainant's Exhibit U continued)
that there is no justification whatever for the bringing of this suit and all of our attorneys share this opinion as also do a large majority of your Directors and stockholders.

Divesting it of technicalities the Complaint alleges a conspiracy between your Board of Directors and me to rob you and your stockholders of your property. As the majority of your Board are amongst the largest stockholders, you are accused of a conspiracy to rob yourselves.

The plaintiffs ask that the contract with me be cancelled and demand an accounting for gold which I have "wrongfully extracted," the amount of which is unknown!! The facts are, that I have accounted to you for every remittance received on the day that it came into my hands, giving you a duplicate copy of the Mint returns.

Our attorneys are hopeful that the trial of this suit together with other proceedings which we have in mind will establish just exactly what happened in the past that led up to the so-called offer of Lloyd Vance, who was admittedly acting as dummy for his father, Joe Vance, at a time when Joe Vance was a Director and Manager of the Mutual and occupied a fiduciary relationship to it and therefore debarred from acting for himself.

We expect to fix the responsibility for this suit and for the acts that went before it. We also think that unless the plaintiffs can establish a reasonable basis for bringing this suit and for the allegations

(Cross-Complainant's Exhibit U continued)

that they swore to in their Complaint that they are not entirely devoid of liability in the matter for any loss they occasioned the Mutual Gold thereby, including both costs and also any damages caused by preventing its financing especially should it develop that this was a part of a conspiracy for the promotion of some ulterior purpose.

The net result of the suit so far has been to prevent me from getting someone to take my place and finance you further and to force me to remain in the mining business against my inclination and to prevent the financing of a cyanide plant and such other improvements and development as might seem desirable.

Vance is materially jeopardizing any further financing. All of this I am convinced is not with the idea of doing the Mutual or its stockholders any good but solely for the purpose of putting it to expense for the personal purposes of Vance.

In reporting the milling results I am including the returns from the starting of the New Mill November 3rd, 1939, part of which is in my report to you of January 8th, 1940, and bringing that down to date so as to make it more readily understood.

(Cross-Complainant's Exhibit U continued)

	<u>Tons</u>	<u>Per Ton</u>	<u>Returns</u>
led from Nov. 3 to Dec. 6, 1939.....	2253	\$3.84	\$ 8,653.84
“ “ Dec. 7 to Dec. 21, 1939.....	1467	3.13	4,590.10
“ “ Dec. 21, 1939 to Jan. 4, 1940	1091	5.06	5,519.88
“ “ Jan. 4 to Jan. 14, 1940.....	938	5.68	5,333.51
“ “ Jan. 14 to Jan. 24, 1940.....	1073	7.10	7,625.24
“ “ Jan. 25 to Feb. 6, 1940.....	1155	6.01	6,945.01
“ “ Feb. 6 to Feb. 16, 1940.....	1066	6.71	7,158.98
“ “ Feb. 16 to Feb. 26, 1940.....	1001	7.36	7,371.01
“ “ Feb. 26 to Mar. 7, 1940.....	1092	4.75	5,194.45
“ “ Mar. 7 to Mar. 17, 1940.....	1096	5.61	6,154.75
“ “ Mar. 17 to Mar. 28, 1940.....	1157	6.18	7,153.54
“ “ Mar. 28 to April 8, 1940.....	1209	5.29	6,396.96
“ “ April 8 to April 18, 1940.....	1096	5.71	6,256.56
“ “ April 18 to April 28, 1940.....	1061	5.96	6,324.64
“ “ April 28 to May 8, 1940.....	1160	5.29	6,141.30
turns from Liner Clean-up.....	5,496.95
led from May 8 to May 18, 1940.....	1090	4.41	4,813.60
“ “ May 18 to May 27, 1940.....	866	5.05	4,377.45
“ “ May 27 to June 6, 1940.....	1002	4.95	4,967.94
“ “ June 6 to June 16, 1940.....	992	5.01	4,969.96
“ “ June 16 to July 3, 1940.....	1642	5.19	8,530.60
	<hr/> 23907		<hr/> \$129,976.27

During this period of 8 months from November 3, 1939 to July 3, 1940, we milled 23,907 tons or 2738 tons per month of an average milling value of \$5.43 per ton. This was at the approximate rate of 91.3 tons per elapsed day, however, allowing for idle time, we actually milled about 100 tons per working day. The mill would have no trouble in handling one hundred and fifty tons per day, and in my opinion, with nominal additions it would handle 250 tons daily if the mine was able to furnish it. We have recently stepped up the tonnage milled to

(Cross-Complainant's Exhibit U continued)

approximately 110 tons daily with the idea of making good 100 tons daily which we will endeavor to do as long as the mine can supply it. We do not anticipate much difficulty in doing this if the grade of the ore does not decrease too much.

A considerable amount of our lost time was due to the power being shut off on account of thunder storms, etc. It was shut off because of a brush fire recently. On the whole, however, the power service has been very satisfactory.

It is fortunate for us that we have been able to materially reduce our operating costs. We are spending a little money now in the endeavor to still further reduce them and it is my hope to get these costs down to \$4.00 per ton or lower exclusive of depreciation but including upkeep and repairs. This would include all operating overhead but allows nothing for manager's salary as I am working for nothing.

I visited the mine in company with Director William L. Grill in the latter part of June, spending two weeks' time in planning little betterments and going over the entire situation in detail. While there I made some changes in management designed to give better results. On the whole I think our staff has done very well under all existing conditions.

We went into last winter without being as fully equipped as we would have liked, being short of bunkhouse and storeroom space, etc., but the boys made the best of it with a very fine spirit.

(Cross-Complainant's Exhibit U continued)

You will recall that when it was deemed advisable to discontinue work on No. 4 South last year on account of water complications that we had just encountered some ore of which we had high hopes that apparently ran about \$25.00. However, on resuming work this year, this development work was a distinct disappointment to us.

The following is a list of the assays taken from Car Samples of this new work which, at this writing, approximates 139 feet of drifting on the vein to the South:

\$11.90, \$19.60, \$7.00, \$7.00, \$1.40, \$5.25, \$7.00, \$6.30, \$6.30, \$2.80, \$7.00, \$10.50, \$2.80, \$8.75, \$3.50, \$1.40, \$6.30, \$4.90, \$3.50, \$1.40, \$8.05, \$1.40, \$4.20, \$3.50, \$9.10, \$2.80, \$4.20, \$7.70, \$6.30, \$3.50, \$4.90, \$4.20, \$5.95, \$3.85, \$4.20, \$9.45, \$0.70, \$2.10, \$1.05, \$0.70, \$0.70, \$2.10, \$1.75, \$1.40, \$1.05, \$3.50, \$1.40, \$4.20, \$6.30, \$3.85, \$15.25, \$2.45, \$5.25, \$1.75, \$1.05, \$0.70, \$1.05, \$5.60, \$3.15, \$1.40, \$8.75, \$7.70, \$2.80, \$2.80, \$1.05, \$1.05, \$2.80.

The average assay value is \$4.52. The vein has diminished in width to two feet but it is well defined and we should follow it South as long as it is readily traceable. This is good prospecting.

We have had bad ground and plenty of water which latter Russell Collins regards as indicative of good ore. In this case it did not prove so. Lately the water has been decreasing in the face as though we were getting through it and the ground is breaking better. We have also located a winze on the

(Cross-Complainant's Exhibit U continued)

No. 4 level at a point where we had good ore and where it seemed likely that we would encounter the least amount of water.

We have cut a station at this point and at the time of writing this report the collar sets are being put in and sinking will be commenced immediately.

We are sinking on the vein and hope to be able to get down fifty feet or more with a tugger. We also hope that the winze will be dry for a little way at least but have an electric pump doped out to handle the water should the showing of ore and values warrant it. This is the best possible prospecting and will tell us more about the mine than any other work that could be done with our present knowledge.

On No. 2 North level we drove quite a distance beyond any probable pay ore and as the formation is broken up and faulted we discontinued further prospecting in that direction on No. 2 North. We expect, however, to drive into the vein to the North on No. 4 where we expect to find a couple of hundred feet of mill ore, which we need. If we do not encounter it we will at least get some information as to the rake of our ore bodies.

I expect to send a large Caterpillar to the mine in a few days to extend and perfect our tailings ponds in view of our last winter's experience at which time we expect to do some further surface stripping and prospecting. Last year we did some that was very informative if not successful.

(Cross-Complainant's Exhibit U continued)

At little expense we uncovered a formation 30 to 40 feet wide, most of which showed some values, perhaps a dollar a ton. We got one assay of about \$8.00 but could not locate any amount of such ore.

I examined these locations very carefully on my last visit to the mine and consider this as the cheapest prospecting that can be done. By going through the overburden with a Cat and Bulldozer we expose the formation very cheaply and a strike even of low grade ore by this means might very materially change our entire picture.

I think a substantial profit could be made on \$4.00 ore in such large bodies as this formation indicates might be possible. However, all of this is in the nature of speculation that might properly be termed wishful thinking.

All of our operations have been carried on with the utmost economy that did not involve the losing of money. We have accumulated a small working capital, not sufficient, however, to repay me any of the money advanced by me and not sufficient to permit the doing of prospecting work that I would very much like to do. I wish I had available the money that has been absolutely wasted in the past. It could be expended at this time in much needed exploration work.

However, I can see no justification in our running you further into debt at this time and neither would it be possible to finance you further upon proper and advantageous terms while the present litigation

(Cross-Complainant's Exhibit U continued)

is pending. Therefore, I have made every effort to conserve our resources and reduce the per ton cost of our operations in which we have been fairly successful and hope to be more so.

Recently the new Assessor of Mono County raised our assessed taxes from \$10,500 to \$75,000. Notice came to us on the last day it was possible to appear before the Board of Equalization at Bridgeport.

Our attorney, Mr. Hinckle, left here at three A. M. on that date, made his argument before the Board on time, obtained a reduction to \$65,000, laid the foundation for a further reduction in the future and got back to Los Angeles at 9:00 P. M. the same night, charging us for this service only his gasoline bill for this 800-mile drive. However, I expect to benefit more than the amount of this tax on the road work which the County is doing on our road.

I hope before the year is out to be able to report to you that some of our prospecting has shown ore bodies heretofore unknown. In the opinion of our Superintendent, Mr. John Simpson, and as far as I am able to determine, we have mined our ore just as it came. That is the only way that it is practical to operate such a property as it is necessary to mine the lower grade and run off mine ore in order to find the richer portions which are irregularly distributed in the vein matter. It is not practical to practice selective mining nor to sort our ore in the mine.

(Cross-Complainant's Exhibit U continued)

As you receive operating statements every month you are familiar with our receipts and disbursements.

I can assure you that we are leaving no stone unturned to protect your interests in every way in our power and would be glad of any suggestions you may desire to make.

Sincerely,

FRANK A. GARBUTT.

FAG-C.

CROSS-COMPLAINANT'S EXHIBIT V

FRANK A. GARBUTT

Suite 712—411 West Seventh Street
Los Angeles, California

February 15, 1941.

Mr. Richard G. Adams,
Los Angeles Times,
Los Angeles.

Dear Mr. Adams:

In accordance with your telephone request I enclose herewith a statement of the ore milled by the Log Cabin Mines Company from July 3rd to December 31, 1940, inclusive.

		<u>Tons</u>	<u>Per Ton</u>	<u>Returns</u>
Milled from	July 3, 1940 to July 14, 1940...	1233	4.74	\$ 5,845.73
" "	July 14, 1940 to July 24, 1940	1169	4.31	5,047.53
" "	July 24, 1940 to Aug. 4, 1940...	1224	4.27	5,237.23
" "	Aug. 4, 1940 to Aug. 16, 1940...	1332	4.81	6,407.36
" "	Aug. 17, 1940 to Aug. 29, 1940	1319	3.10	4,090.88
" "	Aug. 29, 1940 to Sep. 12, 1940	1310	3.69	4,817.57
" "	Sept. 12, 1940 to Sep. 22, 1940	912	3.54	3,232.25
" "	Sept. 24, 1940 to Oct. 9, 1940...	1298	4.10	5,325.65
" "	Oct. 9, 1940 to Oct. 22, 1940.....	1394	2.90	4,038.37
" "	Oct. 22, 1940 to Nov. 2, 1940...	1198	3.15	3,776.11
" "	Nov. 2, 1940 to Nov. 12, 1940...	1078	3.63	3,920.66
" "	Nov. 12, 1940 to Nov. 22, 1940	971	5.94	5,801.28
" "	Nov. 22, 1940 to Dec. 2, 1940...	1068	3.82	4,085.85
" "	Dec. 6, 1940 to Dec. 23, 1940...	1010	2.75	2,786.92
		<hr/> 16516		<hr/> \$64,395.39

During this period from July 3rd, 1940 to Jan. 1, 1941 we milled 16,516 tons which returned \$64,395.39 or an average value of \$3.90— per ton.

To this must be added the tie up and recovery from odds and ends such as scoop pit, classifier, etc., of \$13,623.56 amounting to 82.48 cents per ton, which brings the value of the ore treated to approximately \$4.72½ per ton for the period. This completes the report of operations to January 1st, 1941.

You will note some lost time which was due to a flu epidemic and some severe blizzards.

We are faced with a difficult situation. From the experience of the three winters we have operated we know the expenses are unavoidably increased and that the grade of the ore will not justify this increase.

We also know that it is expensive to shut down for five months of each year.

Repairs must be kept up from day to day or their cost increases out of all proportion, and expenses such as taxes and overhead do not stop.

Another thing that works against operating for a part of the year is the difficulty of getting and keeping key men at any price we can afford to pay.

No matter how good a man may be, he cannot hope to familiarize himself with our problems in less than six months. This is offset to some extent by my own familiarity with the property and its problems which, however, are constantly changing but there is no substitute for experience.

There is no hope of earning the money out of the property to meet our payments and in many respects our contract is unworkable.

When I made the original contract with the Collins Brothers we had no idea of the value of the property or its possibilities and it soon developed that in order for the buyers to carry on it would be necessary to modify it, which, as representative of the buyers, I did on several occasions.

As to the value of the property, it was, of course, any man's guess.

It has now developed that any selective mining is impracticable and that any such attempt would rob the mine as it is impossible to find most of the better ore without mining the poorer, and while there still exists the possibility of small bunches of rich ore, the limits and average grade of the ore are pretty well defined.

When the mine commenced to go to pieces last fall due to the water that seeped into the formation from the spring run off I did the only thing possible if any material part of the mine was to be saved and used all of the men and timber necessary to save what we could of it.

This delayed our preparations for the winter, very materially, for it was uncertain until the last moment whether we would be able to run during the winter or not.

This also used up the money we had accumulated for our Nov. 1st payments but it also saved the mine for the owners.

Since January first conditions have been worse. We finally succeeded in getting supplies in and got started up January 18, 1941. Prior to that date about half of our crew were snowed in without much to eat and got along on two meals per day during the blizzards that kept them marooned at Camp.

Up to February 1st we succeeded in milling 963 tons which returned \$3.06 per ton or \$2946.93. We did not have enough money to meet our payroll due February 1st until we received this remittance from the Mint.

It has been storming at the mine up to our last report February 14th.

Sincerely,

FRANK A. GARBUTT.

FAG-C.

CROSS-COMPLAINANT'S EXHIBIT W

FRANK A. GARBUTT

Suite 712—411 West Seventh Street

Los Angeles, California

February 5, 1941.

Mr. Harry Chandler,
Alice Clark Ryan:

Since the Log Cabin Mines Company took over the management of the mine it milled up to December 31, 1939, 12,777 tons, and in 1940, 35,652 tons, or a total of 48,429 tons which produced \$264,610.17, or an average of \$5.46+ per ton.

Of this amount, as nearly as I am able to estimate, the operating company was entitled to retain \$8.00 per ton on 8400 tons and \$5.00 per ton on the balance, a total of \$267,345.

The amount of \$264,610.17 was actually retained by it which did not repay its costs during the period.

Mr. Carter will prepare the annual statement as soon as his time permits and a copy will be forwarded to you.

LOG CABIN MINES COMPANY

By FRANK A. GARBUTT

Manager.

cc to Mr. Adams

[Title of District Court and Cause.]

DEPOSITION OF HELEN M. SUTHERLAND

Helen M. Sutherland, being first duly sworn by the Notary Public, was examined and testified as follows:

Direct Examination

By Mr. Abel:

Q. State your name.

A. Helen Maude Sutherland.

Q. And you are one of the plaintiffs in this action?

A. I am one of the plaintiffs in this action—yes, I am. Pardon me.

Q. State whether or not you were present in Spokane at the stockholders' meeting of Mutual Gold Corporation held on August 6, 1938.

A. I was not there.

Q. Were you represented at that meeting by proxy? A. No, sir, I was not.

Q. Who is Charles W. Sutherland?

A. My son.

Q. And he is one of the plaintiffs in this action?

A. Yes, sir.

Q. Do you know whether or not your son Charles W. Sutherland attended the stockholders' meeting of Mutual Gold Corporation on August 6, 1938? A. I know that he did not.

Q. You know that he did not?

A. I know that he did not.

Q. Do you know whether he gave any proxy or was represented at that meeting?

(Deposition of Helen M. Sutherland.)

A. He was not. He did not give anybody any proxy.

Q. State whether or not at any time prior to the organization of Log Cabin Mines Company you, as a stockholder of Mutual Gold Corporation, or otherwise, knew of the contemplated organization of Log Cabin Mines Company. A. I did not know.

Q. You did not know? A. No.

Q. State whether or not you have at any time or in any way consented to, approved or ratified the organization of Log Cabin Mines Company.

A. No.

Q. State whether or not you have at any time or in any way consented to, approved or ratified the transfer of the assets of Mutual Gold Corporation to Frank A. Garbutt, or to Log Cabin Mines Company. A. I have not.

Mr. Abel: That is all.

Cross Examination

By Mr. Grill:

Q. Did you receive a notice of the meeting of the stockholders of Mutual Gold Corporation, the meeting to be held on August 6, 1938? A. No.

Q. You never received a copy of the notice of that meeting? A. No.

Q. And did Mr. Vance—did Mr. Lloyd Vance later call upon you in Vancouver and discuss this suit with you? A. I talked with Mr. Vance.

(Deposition of Helen M. Sutherland.)

Q. With Mr. Vance, Senior? A. Yes, sir.

Q. Did he ever agree to pay the cost or the expenses of this suit?

A. No. There has been nothing said about it.

Q. At any time to you?

A. Not until Mr. Collins made the suggestion that where the plaintiffs were implicated in this trial, we might be responsible, and I took it up with Mr. Vance.

Q. And what did he then tell you?

A. He just naturally informed me that there would not be any danger of us—of the plaintiffs being implicated financially. That naturally he would be——

Q. Well, if this suit was successful did he guarantee to pay you for your stock a dollar a share, or anything of that kind?

A. He just simply told me that my shares would be worth a dollar a share.

Q. Well, did he say that he would pay you that for them?

A. Yes, if I wanted to sell—if I cared to sell.

Q. He would pay you a dollar a share for them?

A. If I cared to sell.

Q. Did you personally employ any of the attorneys in this case? A. No, sir.

Q. Do you know the name of the attorney in California handling the case?

A. I have heard his name, but I cannot tell you who it is.

(Deposition of Helen M. Sutherland.)

Q. Have you ever had any correspondence with him? A. No, sir.

Q. Have you ever given any instructions to him or to Mr. Abel regarding the suit?

A. Did I ever?

Q. Have you ever given any instructions to the attorney in California or to Mr. Abel regarding this suit? A. Not to my knowledge, no.

Q. Not to your knowledge? A. No.

Redirect Examination

By Mr. Abel:

Q. When was it Russell Collins made the suggestion to you that you have testified to on cross-examination?

A. That was—well, he was up there twice, Mr. Abel. It was when he was up there to see me.

Q. I asked you when. A. In Vancouver.

Q. Now, when was that?

A. Now, wait a minute. That was last Spring, I think, some time.

Q. That was after this suit was brought?

A. Oh, yes.

Q. And state whether or not he was trying to get you to drop out of the suit.

A. Yes. He tried to arrange—he was there to arrange that I would be taken off as a plaintiff in the case.

The Witness: Well, he stated that I might—that it might be bad for me if I was a plaintiff and

(Deposition of Helen M. Sutherland.)

we were to lose; that I might to a certain extent be one who would be held responsible, and I believe that he tried to get several of the plaintiffs to withdraw from what he mentioned.

Q. (By Mr. Abel) Now, I am not asking you for your beliefs. I am asking you for what he said when he called on you at Vancouver. Relate the conversation as nearly as you can.

A. Well, he was up there in the interests of the Mutual Gold Corporation.

Q. Just speak up.

A. And he informed me that Mr. Garbutt had taken over the controlling part of the mine and what would happen if this Mr. Garbutt did win his case, and he informed me that from the way the contract between the shareholders and Mr. Garbutt read, that they could not lose, that the way that they had the contract made out he could only claim a certain part of the mine.

Q. Now, who is Russell Collins?

A. Russell Collins is one of the shareholders and the man that I bought from. At the time he was one of the promoters of the mine—at the time that I bought my shares.

Q. Do you know whether or not he was a director of Mutual Gold Corporation at the time that he made these statements to you?

A. I am sure that he was at that time that we bought our shares.

(Deposition of Helen M. Sutherland.)

Q. No, not at that time, but I am speaking of the time that he made these statements to you about Garbutt and about the mine. What was his relation, if any, to Mutual Gold Corporation at that time?

A. Well, I am of the impression that he was still one of the directors.

Q. Where did he live at that time? A. He?

Q. Yes. A. Mr. Collins?

Q. Yes.

A. In California. I was under the impression that he was living at Leevining.

Q. Do you know how far distant that is from your residence in the city of Vancouver, British Columbia?

A. No, I don't. It would be about two thousand miles, I guess.

Q. Did he state whether or not he made a special trip up to see you?

A. Yes, he made a special trip up to see me. And he made a trip after that again.

Q. What was the occasion of his second trip?

A. Very much the same. He came back to inform me that his lawyer in California had directed him and had come to the conclusion that it would be better business to leave me on. I don't know about the others. That if they took me off they might come only on Mr. Vance and that would do more injury.

Q. Do you state that Russell Collins told you that? A. He did tell me that.

(Deposition of Helen M. Sutherland.)

Q. On what occasion was that?

A. That was on the second trip up to Vancouver.

Q. When was that?

A. He had in the meantime conversed with his lawyer in California.

Q. When was that?

A. That was in the spring of—well, it was last spring—the spring of 1940. This is 1941, so wouldn't that be 1940—last spring?

Q. Yes. I think that is all.

Recross Examination

By Mr. Grill:

Q. Now, you say that Mr. Collins made two trips to see you, Mrs. Sutherland? A. Yes.

Q. Did Mr. Vance come up to see you between the two trips—between the time that Mr. Collins made his first trip and the time that he made his second trip? A. Yes.

Q. Do you recall anything more than what you have testified to with reference to Mr. Vance's visit at that time between the two trips?

A. What Mr. Vance told me between the two trips?

Q. At the time that he saw you in Vancouver, do you recall your conversation with him?

A. No.

Q. Any more than what you have testified to?

(Deposition of Helen M. Sutherland.)

A. No. That was the only conversation that Mr. Vance and I had, and it was just merely through those two telegrams, that is all.

Q. Well, was he up there at that time? Did he talk to you on that occasion that you have just stated that he was up there, between the time that Russell Collins made the two trips?

A. That is all that I recall that he said.

Q. And what was that?

A. Well, the only thing that I can recall in regard to the conversation that we had, as to when he was up there——

Q. (Interrupting) That is what I am asking you about, as to when he was up there.

A. Well, he came up to have a talk with me, and to verify whether I would act as a plaintiff.

Q. You were then a plaintiff in the case, weren't you? A. What is that?

Q. You were then a plaintiff in the case, weren't you—at that time?

A. At that time I was a plaintiff in the case, yes.

Q. And nothing further was said about his responsibility for the costs? A. No.

Q. And expenses?

A. No. There was nothing said at that time. It was after Collins came up that he put the idea in my head. I hadn't thought of it before.

Q. Then Mr. Vance spoke to you later about that, did he?

(Deposition of Helen M. Sutherland.)

A. Mr. Vance was only up the once.

Q. Do you recall when that was?

A. That was just in between the two calls that Russell Collins made.

Q. I see. Now, when was that?

A. I haven't got the exact date. It was—well, I haven't got the exact date because I didn't know that it would be brought up.

Q. How long did you have the conversation with him—for about how long?

A. With Mr. Vance?

Q. Yes.

A. About the Mutual Mine we had a conversation possibly for half an hour, or something like that—just in a casual way.

Q. (By Mr. Grill) What did he state about the mine at that time?

A. Well, Mr. Vance stated that Mr. Garbutt was bringing a suit in California, and that he wanted to know if I was willing to carry on as plaintiff. There really wasn't anything——

Q. (Interrupting) Did he state anything about the mine management at that time to you—about Mr. Garbutt's management? A. No.

Q. As a matter of fact, you don't remember very much about the conversation, do you?

A. No, I don't. I will tell you, Mr. Vance was up there and he made a personal call upon my husband and me, and I think the main thing that

(Deposition of Helen M. Sutherland.)

he came up for was to see if I was going to be—to decide whether or not I was going to be one of his plaintiffs.

[Title of District Court and Cause.]

DEPOSITION OF G. H. FERBERT

I am a Stockholder of Mutual Gold Corporation and have been one continuously since the fall of 1933. I own about 90,000 shares. From the time I first took stock in 1933, up until through the fall of 1937, I made advances and took treasury stock for them. I also bought a hundred thousand shares of stock at a cent a share, and I bought some at a cent and a half a share. I sold this stock for what I paid for it, and there was no profit in it and no loss. I was elected a director of the corporation in 1936 and took the directors' oath in August, 1938. I have been one continuously since. The corporation owes me, I think, between \$1,200 and \$1,300 which I have advanced since May, 1938. I advanced moneys to pay lumber bills, the Lone Pine Lumber Company, Bishop Hardware Company in Mono County, California, watchman's wages to Mr. Sturgeon, and minor bills in Spokane for the office. I advanced money to the office, and they paid it out for bills, whatever they were. I am conversant with the business affairs of the corporation, and have been since I became a Stockholder, and especially since I became a director.

(Deposition of G. H. Ferbert.)

The corporation needed new mining equipment but did not have the money to buy it, or to operate with the old equipment. It did not have the money to pay an installment of \$10,000.00 falling due on November 1, 1938 to the owners. I did not know of any way by which it could raise any more money.

Lloyd Vance made a written offer to the Board of Directors to finance the company on certain conditions, but I did not favor it. I proposed to go to California and get a contract with Frank A. Garbutt or someone that he would interest for us. I went to Los Angeles with Mr. Stiegler and Mr. Grill—I believe Mr. Collins was down there—to see Mr. Garbutt about that contract. As director, I voted for the Garbutt contract in preference to the Vance contract. I based my opinion on the man himself. I wanted him on account of his experience. He had been at mining for a lifetime and he was financially responsible, and I thought we would get a fair deal.

The Stockholders' meeting of September 24, 1938 was called off upon advice of counsel, who stated that the Stockholders had already conferred all the powers they had upon the board. No further power was necessary. I paid my own expenses as director. They consisted of traveling expenses to Yakima, Spokane and Seattle, railroad fares to Los Angeles, hotel bills, telephone, telegraph, tolls. I have never been repaid. Mr. Garbutt never advanced me any money in connection with his dealings with Mutual Gold Corporation property.

(Deposition of G. H. Ferbert.)

Q. When did you first meet Frank A. Garbutt?

A. I think I met him in 1935.

Q. Where did you meet Garbutt?

A. It was on business for this company. That is how I came to meet him.

Q. In 1935?

A. I think it was in 1935. It might have been early in '36.

Q. When did you next meet Garbutt in connection with Mutual Gold Corporation?

A. After the meeting in Spokane, the 6th of August, when Mr. Collins and I—let's see—I think after the mill shut down. I was in Los Angeles, and I went up to Mr. Garbutt's office with Mr. Keily, that would be '37—no, that would be '38, wouldn't it, in the spring of '38.

Q. Can you give an approximate date in 1938 that you first met Garbutt in connection with Mutual Gold business?

A. I went there on business. Yes, I can give you an approximate date.

Q. Do so.

A. When Mr. Collins and I were sent to California by the board from Spokane. That would have been August 7 we left there.

Q. What year?

A. 1938, when we went down and tried to interest him in a contract.

Q. Did you attend the stockholders' meeting and the directors' meeting on August 6, 1938?

(Deposition of G. H. Ferbert.)

A. Yes.

Q. Of Mutual Gold? A. Yes.

Q. Was there any discussion between you and Garbutt before August 5, 1938, or with you and Keily before that date, with respect to the terms, conditions and provisions of any deal with Garbutt?

A. I never discussed a deal with Mr. Garbutt until Mr. Collins and I left Spokane and went down there for a contract.

Q. What date?

A. That would have been the day after the meeting, August 7th we went down, I guess we went down in two days. It would be around the 9th of August.

Q. On August 7 or thereabouts, 1938, did you then go to Los Angeles? A. Yes.

Q. With Mr. Collins? A. Yes.

Q. How many days were you at Los Angeles?

A. Well, I think we were there one, probably one and a fraction. We weren't there very long.

Q. Did you see Garbutt? A. Yes, sir.

Q. How long were you with him?

A. Oh, I guess a half a day talking.

Q. Who was there?

A. Mr. Garbutt, Mr. Collins, myself, and at times his stenographer, and I don't recall anyone else.

Q. Now, would you tell all that took place at that meeting with reference to Mutual Gold Corporation and a proposal to sell an interest in the property of Mutual Gold Corporation?

(Deposition of G. H. Ferbert.)

A. Oh, I don't think, Mr. Abel, I could do that.

Q. To the best of your ability, tell in general what the conversation was on the subject.

A. Well, the subject was, I asked Mr. Garbutt if he would give us a contract and he would take this proposition up. He didn't seem to care whether he did or not, but he eventually did, yes.

Q. What was said about a deal and what kind of a deal?

A. Well, I can remember one thing: I don't remember much about the details, but what I wanted to do was get a contract back to the Board and show them that I could get one; but I remember this remark he made. He said, "I may not be able to give you as good a contract as Mr. Vance." I said, "I will judge that," and so did Mr. Collins.

Q. Is that all he said about what kind of a deal?

A. That is all I recall; that stuck in my memory.

Q. That it wouldn't be as good a deal as with Mr. Vance?

A. No, no; get it right. He said, "I may not."

Q. Did he intimate what his proposal would be?

A. Oh, he had a rough sketch which we brought back. You saw it. We had to hurry.

Q. What did Garbutt say about the Mutual Gold Mine, the property itself?

A. We didn't discuss it. He knew more about it than we did.

Q. How do you know that?

(Deposition of G. H. Ferbert.)

A. Because he has been taking care of it for years.

Q. How do you know that?

A. Well, that is a guess, but I have learned a whole lot about him since. He is very thorough.

Q. Are you testifying to hearsay on that subject?

A. Well, maybe.

Q. Did you ever see Garbutt at the property itself?

A. No.

Q. You referred to a proposal that was made, and you say that I knew about it. Do you refer to the de Mille proposal?

A. I refer to the contract that Mr. Collins and I brought back. I don't know where it is now. I haven't got one.

Q. Did you bring back a contract?

A. We brought a tentative contract. No, there was nothing signed.

Q. When did you first hear discussion concerning the organization of a new corporation to take over the assets of Mutual Gold Corporation?

A. When did I first hear of that?

Q. Yes.

A. Why, I think somebody sent me a tentative agreement, in which an offer was made by Lloyd Vance, at Georgetown, California, it must have been in July sometime; and Lloyd Vance was going to organize a company, and he was to take 60% and the Mutual was to get 40%. I think that was the

(Deposition of G. H. Ferbert.)

first time I heard of a company, outside of the proposition made at the directors' meeting in March, in which we were all authorized, the directors were authorized or anyone else——

Q. Were you at Los Angeles again during August, 1938?

A. I didn't go back until we went back and got——when we went back with Mr. Grill and Mr. Stiegler and got the September 2 agreement.

Q. Now, when did you get to Los Angeles to negotiate that agreement?

A. Oh, September 2,—probably the last days of August. I can't give you that date.

Q. How long were you negotiating that agreement before its execution on September 2, 1938?

A. I think we were a couple of days.

Q. Was much time consumed in arriving at the agreement of September 2?

A. Well, Mr. Grill and Mr. Garbutt both did the work. I wasn't present all the time.

Q. Did you make any proposals as to what should go into that contract?

A. No, I don't recall it.

Q. Do you recall any proposal from any director of Mutual Gold Corporation as to what should go into the contract?

A. Well, I don't know what Mr. Grill put in. I did make one proposal, yes.

Q. What was that?

(Deposition of G. H. Ferbert.)

A. I made a proposal about moneys.

Q. What proposal did you make?

A. That we raise money to pay off our open accounts.

Q. In other words, pay the creditors of Mutual Gold?

A. Yes.

Q. And was that turned down?

A. No.

Q. Was it embodied in the contract?

A. I don't recall. I know that Mr. Garbutt arranged the loan in our presence, \$25,000. We were to pay off our open accounts, and he was going on the note.

Q. What day was that?

A. Pardon?

Q. Was that on or about September 2?

A. Yes, I think that was on that—I am sure it was part of the discussion.

Q. Do you testify that, in the negotiation of the contract of September 2, 1938, that Garbutt was to loan money to pay the creditors of Mutual Gold Corporation?

A. No, I didn't say that. I said that he negotiated a loan with the bank for the Mutual Gold, and he was going on the note, to pay the creditors of Mutual Gold.

Q. What bank was that?

A. I know where it is. I can't give you the name. Citizens', Los Angeles Citizens' Trust and Savings, or something; but I can't give you the name.

Q. What was the conversation on that subject? What was said about \$25,000 at that meeting?

(Deposition of G. H. Ferbert.)

A. We asked and Mr. Garbutt agreed to borrow \$25,000 for the Mutual Gold, to pay off the indebtedness.

Q. And about what date was that, that he made that agreement?

Mr. Grill: I think he stated that.

Q. (By Mr. Abel) September 2, you say, or about that?

Mr. Grill: He said about September 2.

A. I said that, yes.

Q. (By Mr. Abel) Who was present at that meeting?

A. Mr. Stiegler, Mr. Garbutt, Mr. Grill, Mr. Collins and myself.

Q. Was that agreement of Garbutt's to procure for the Mutual Gold \$25,000, part of the contract of that date?

A. No, there was nothing in the contract.

Q. Why was it omitted?

A. Well, I can't tell you exactly why it was omitted. I know the reason was never pressed is because we had no use for the money.

Q. I thought that the purpose of the whole transaction was to obtain money to relieve the financial necessities of Mutual Gold Corporation?

A. But we didn't need the money.

Q. What is your answer?

A. We couldn't use the money so we never tried to get it, never asked for it.

(Deposition of G. H. Ferbert.)

Q. Well, I thought you said that Garbutt agreed to furnish the money?

A. Yes, if we needed the money, he agreed to it; but when we came back here and asked Mr. Vance, he wouldn't accept the money, so we didn't borrow it. That wasn't in the contract. It isn't in there.

Q. Did you not state that part of the contract was that Garbutt was to advance \$25,000?

A. No, I don't recall stating that. Probably it was that I proposed. You asked me if I made any proposal. It wasn't incorporated.

Q. What did Garbutt say to that?

A. He said he was willing to help us raise the money.

Q. On what security? A. Stock.

Q. Stock in what?

A. In the Log Cabin Mines.

Q. The Log Cabin Mines hadn't been thought of at that time, had it?

A. We understood he was going to organize a company. I don't know what he was going to call it as far as that goes.

Q. What was your next dealing with Garbutt on behalf of Mutual Gold Corporation in which you participated?

A. Well, the next, I went down to California, Mr. Abel.

Q. When?

A. Oh, I don't know the date, but I think that Mr. Garbutt withdrew from his contract and acted

(Deposition of G. H. Ferbert.)

as a trustee. Then we made another contract December 17, and I was in California at the time.

Q. Well, I want the next transaction after September 2.

A. I participated in that and signed that, that is all.

Q. What contract? A. December 17.

Q. Do you remember any Mutual Gold transaction with Garbutt, which you participated in, subsequent to September 2; and if so, just tell what.

A. No, I didn't—that was carried on with the Board up here, and I was down there.

Q. Do you mean to say, then, that you had nothing to do with the negotiations or dealings with Garbutt after September 2, '38?

A. I saw the agreements, and looked them over, and agreed with them; but no, I didn't talk to Mr. Garbutt, I didn't discuss it.

Q. Then you didn't meet with the Board of Mutual Gold? A. No. I was in California.

Q. And when did you next meet with the Board of Mutual Gold after September 2, '38?

A. After September, '38? I have no recollection. I can't tell you. It would have been '39. I don't know.

[Title of District Court and Cause.]

DEPOSITION OF HELEN MAUDE LORENZ

(1). State your name, age and present residence.

A. Helen Maude Lorenz, fifty-one, residence 1785 Southwest Montgomery Drive, Portland, Oregon.

(8). State whether or not you gave to J. E. Stiegler a proxy to be voted by him at the meeting of the stockholders of Mutual Gold Corporation held August 6th, 1938 at Spokane, Washington.

A. Yes.

(9). If you answer Interrogatory No. 8 in the affirmative, state the time, place and circumstances of the giving of said proxy to J. E. Stiegler, and whether the giving of said proxy was solicited by Mutual Gold Corporation, or the management of said corporation.

A. About August 6, 1938, I received at Portland, Oregon, from the Mutual Gold Corporation, a letter to stockholders, notice of annual meeting of stockholders of Mutual Gold Corporation, and a proxy, which proxy, as I remember, appointed J. E. Stiegler as my proxy. The giving of said proxy was solicited by Mutual Gold Corporation, the letter being signed by J. E. Stiegler, President, and the notice of meeting being signed Mutual Gold Corporation, by E. Fuson, Secretary.

(10). If you answer Interrogatory No. 8 in the affirmative, please produce each and every letter or notice received by you from Mutual Gold Corpora-

(Deposition of Helen Maude Lorenz.)

tion, the secretary or manager thereof, in respect to said meeting or said proxy, identify the same and attach to this deposition.

A. I now produce Notice of Annual Meeting of Stockholders of Mutual Gold Corporation, setting date of meeting as August 6, 1938, which I have marked Exhibit "A"; also letter signed J. E. Stiegler, President, dated July 20, 1938, written on letterhead of Mutual Gold Corporation, 401 Fernwell Building, Spokane, Washington, which I have marked Exhibit "B"; also proxy for signature, dated the 21st day of July, A. D. 1938, which I have marked Exhibit "C".

(11). State whether or not you identify "Exhibit A" hereto attached as a notice received by you of a stockholders' meeting of Mutual Gold Corporation to be held August 6th, 1938. A. I do.

(12). If you answer Interrogatory No. 11 in the affirmative, that you identify said notice, state the time, place and circumstances of receiving said notice and what, if anything, you did in respect to attending said stockholders' meeting or issuing a proxy to J. E. Stiegler, to be voted thereat.

A. I received the notice in the ordinary course of mail. After receipt of proxy I signed it and returned it to Mutual Gold Corporation.

(13). State whether or not you identify "Exhibit B" hereto attached as a letter received by you, signed by J. E. Stiegler, re stockholders' meet-

(Deposition of Helen Maude Lorenz.)

ing of Mutual Gold Corporation to be held August 6th, 1938. A. I do.

(14). If you answer Interrogatory No. 13 in the affirmative, state the time, place and circumstances of receiving said letter.

A. I received the letter at Portland, Oregon, in the customary course of mail, about August 6, 1938.

(15). State whether or not you identify "Exhibit C" hereto attached as a proxy to be voted at the meeting of Mutual Gold Corporation held August 6th, 1938, copy of which was received by you.

A. I do.

(16). If you answer Interrogatory No. 15 in the affirmative, that you do identify said proxy, please state the time, place and circumstances of receiving the same, and what, if anything, you did in respect to issuing the proxy to J. E. Stiegler, to be voted at said meeting.

A. I received said proxy on or about August 6, 1938, at Portland, Oregon, in the ordinary course of mail, and I issued the proxy to J. E. Stiegler, to be voted at said meeting, and mailed the same to Mutual Gold Corporation in Spokane, Washington.

(17). State generally when, if at all, you received "Exhibits A, B and C", or any thereof, and all the circumstances of such receipt.

A. I received Exhibits "A", "B" and "C", on or about August 6, 1938, in the ordinary course of

(Deposition of Helen Maude Lorenz.)

mail. There were no special circumstances surrounding the receipt of same.

(18). State generally what, if anything, you did upon receiving, and pursuant to the receipt by you, if you did receive, "Exhibits A, B, and C".

A. I read the documents carefully, and then signed the proxy and mailed it to Mutual Gold Corporation.

(19). State your place of birth, and whether or not you have always been a citizen of the United States.

A. I was born in Greensboro, North Carolina, and have always been a citizen of the United States.

(20). State whether prior to the commencement of this action you were over the age of twenty-one years.

A. Yes.

(21). State whether you have at any time, prior to the organization of Log Cabin Mines Company, been informed, as a stockholder of Mutual Gold Corporation, or otherwise, of the organization of Log Cabin Mines Company.

A. No. I never heard of Log Cabin Mines Company until after the commencement of this action.

(22). If you answer Interrogatory No. 21 in the affirmative, state generally and specifically the time, place and circumstances under which you received information of the organization of Log Cabin Mines, and generally and specifically what information, if any, you did receive.

(Deposition of Helen Maude Lorenz.)

A. Never heard anything regarding anything of the organization of Log Cabin Mines.

(25). State whether or not you have at any time, or in any way, consented to, approved, or ratified the organization by Mutual Gold Corporation of Log Cabin Mines Company.

A. No, I have not.

(26). If your answer to Interrogatory No. 25 is in the affirmative, state the time, place and circumstances, generally and specifically, of such consent, approval or ratification. If your answer thereto is in the negative, state any and all circumstances, generally and specifically, relative to such non-consent, non-approval and non-ratification.

A. My answer to Interrogatory No. 25 is in the negative. When I learned of the organization of the Log Cabin Mines and that this present suit was being contemplated, I wired Mr. Abel at Los Angeles, to be joined as plaintiff, in order to protect my interests.

DEPOSITION OF MILTON I. HIGGENS

Milton I. Higgens, being first duly sworn by the Notary Public, W. R. Sampson, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. State your name, please, resident and occupation.

(Deposition of Milton I. Higgens.)

A. Milton I. Higgens, chiropractor, Coeur d'Alene, Idaho.

Q. How long have you lived in Coeur d'Alene?

A. Seven years.

Q. That is your place of residence?

A. Yes.

Q. Are you the M. I. Higgens that is named as a plaintiff in the case entitled Helen M. Sutherland, Charles W. Sutherland, M. I. Higgens, et al, against Frank A. Garbutt? A. Yes.

Q. Now pending in the District Court of the United States for the Southern District of California, Los Angeles? A. Yes.

Q. When, if at all, did you first learn, that is, approximately, of a suit brought in the State Court in Los Angeles, California, by the Log Cabin Mines Company, a corporation, to quiet title in it; that is, the plaintiff Log Cabin Mines Company—to what is known as the purchase contract—that is, the contract for the purchase of these mining properties in Mono County, California? Did you or did you not ever learn of a case of that kind, a suit to quiet title in the Log Cabin Mines Company to the mining claims for the purchase of which the Mutual Gold had a contract?

A. Yes, I had heard of it.

Q. Can you state approximately when you first heard of that suit?

A. I believe it was in the fall of 1939.

(Deposition of Milton I. Higgens.)

Q. Could you say any more definitely than that? I am not trying to pin you down. Do you want to state any more definitely than that?

A. Well, I could say that it was around Thanksgiving time——

Q. (Interposing) In 1939? That is close enough.

A. As I recall. Around Thanksgiving time.

Cross Examination

By Mr. Weller:

Q. You received notice of all of the stockholders' meetings that were held; that is, you received a number of notices? A. Oh, yes.

Q. One every year, at least, for an election of the directors and so forth? A. Yes.

Q. And you didn't attend any of those meetings after about 1935? A. I don't think so.

Q. You say, Doctor, that you were given to understand that the company was having certain dealings which you believed wrong. Then it wasn't Mr. and Mrs. Sutherland or Mrs. Lorenz that gave you to understand those facts or what you thought were facts? A. No, not directly.

Q. Who was it that gave you that understanding?

A. Well, there was—I don't know all the people at some of the meetings that I have talked with. I relied largely on my own conclusions from reading——

Q. (Interposing) Reading what?

(Deposition of Milton I. Higgens.)

A. (Continuing) —reading the information sent out by the various—the circular letters.

Q. Sent out by whom?

A. Well, who were they sent out by? Stiegler and Garbutt and other circular letters that were sent out.

Q. You formed your impression by the letters sent out by Mr. Stiegler and Mr. Garbutt that there was something wrong? Is that correct?

A. There had to be something wrong, yes.

Q. Why?

A. Because there was a question of opinions there.

Q. Why did there have to be something wrong?

A. Wherever there is dissension or two different opinions——

Q. (Interposing) Well, who dissented from those letters of Stiegler and Garbutt?

A. Well, Collins' letters and things like that. There was a controversy of opinion.

Q. Who was controverting the opinions of which you speak, of Mr. Garbutt?

A. Mr. Vance, for one.

Q. Anybody else? A. I can't recall.

Q. You verified the complaint in this action, didn't you, Doctor? A. Yes.

Q. Did you give the attorneys the information which they set forth in the complaint?

A. No, not all.

(Deposition of Milton I. Higgens.)

Q. Did you give them any?

A. I confirmed it.

Q. Were you acquainted with Mr. Moore?

A. At that time?

Q. Yes. A. No.

Q. Were you acquainted with Mr. Abel?

A. No.

Q. Mr. W. H. Abel?

Mr. Moore: At what time do you mean, Mr. Weller?

Mr. Weller: At the time the complaint was prepared and signed. (Q). Had you seen either of them at that time, at the time of preparing and signing the complaint, either Mr. Moore or Mr. Abel, the attorneys of record?

A. At the time of signing, yes.

Q. Which one, or both?

A. Mr. Moore, I think. I think it was probably about the time of the signing.

Q. Was it before or after?

A. I am trying to recall.

Mr. Weller: Q. What information did you give to Mr. Moore at that time?

A. Confirmation of my understanding of the conditions, of my opinion.

Q. You had, then, I take it, Doctor, no personal knowledge of the facts here?

A. That is right.

Q. So what you told Mr. Moore was an understanding that you had arrived at from communica-

(Deposition of Milton I. Higgens.)

tions you had received from Mr. Vance?

A. Not necessarily from Mr. Vance, no.

Q. Then from whom?

A. From communications I had received from Garbutt, Stiegler and Vance as well.

Q. Did you employ Mr. Moore and Mr. Abel, or either of them, Doctor, to act as your attorneys in this case?

A. No, not then.

Q. You didn't pay them any money as a retainer, or otherwise?

A. No.

Q. Did you agree to pay them any money for acting for you?

Mr. Moore: That is objected to as a privilege.

A. No.

Mr. Weller: Q. Do you have an understanding with anyone, Doctor, that you will not have to pay any money to anybody on account of costs, that is, or otherwise in this case?

A. No, I have no such understanding. I have been informed of such.

Q. You have been informed? By whom?

A. A little red-haired man over in Yakima told me that all of the expenses of the thing was coming back on my personal shoulders. I don't recall his name. He is a broker over there—Peterson, I believe.

Q. I think you misunderstood my question.
(Question read)

A. No. I had no such understanding with anyone.

(Deposition of Milton I. Higgins.)

Q. You haven't been advised by anyone that you will not be required to bear any of the expenses of this case?

A. No, none whatever. I haven't been advised of that.

Q. How did it happen, Doctor, that you and the Sutherlands and Mrs. Lorenz got together and all together were named as plaintiffs in this case, you not having met any of them or having had no correspondence with them, but named with you as plaintiff in this case?

A. Well, Mr. Bateham mentioned it. He mentioned the proposition and explained to me in a way what the intention of the minority group was to do.

Q. Did you ask to become one of the plaintiffs?

A. He asked it. He suggested it, and he said if I cared to I might.

Q. Did he tell you who was causing the action to be brought at that time?

A. Yes.

Q. Who did he say?

A. The Mutual Gold, as I understood.

Q. No. Who was causing this action to be brought in which you were one of the plaintiffs? You say he asked you to be one of the plaintiffs. Did he tell you who was causing this action to be brought in which you were to be named as plaintiff?

A. No, he didn't mention the person, I don't believe.

Mr. Moore: He? Mr. Bateham, I understand you are referring to.

(Deposition of Milton I. Higgens.)

Mr. Weller: Q. Mr. Bateham didn't mention the name of anyone who was causing this action to be brought?

A. No. I understood that perhaps Mr. Bateham was going to do it himself, as far as I understood.

Q. You didn't know, then, who was bringing this action in which they were asking you to act as plaintiff?

A. I knew it was a group of stockholders.

Q. Was any explanation given to you at all of any kind, whether lengthy or not, as to why they wanted you to be one of the plaintiffs?

A. No.

Q. No reason at all? A. No, he didn't.

Q. Just out of thin air Mr. Bateham came to you and asked you to be one of the plaintiffs in this action, you being a resident of Idaho and the action being brought at Los Angeles in the Federal Court? Is that correct? A. Yes.

Q. So the only one whose letters complained about the deal that you have mentioned would be Mr. Joe Vance? Is that correct?

A. Yes, I think so.

Q. Doctor, did you ever receive any letters from Joe Vance asking you to become one of the plaintiffs in this action? A. Positively not.

Q. Or anyone writing for him?

A. No, no; positively not.

Q. Was there at any time any representation made to you by anyone that in no event, without

(Deposition of Milton I. Higgens.)

regard to the outcome of this case, would you be required to bear any expense or attorneys' fees in connection with the case?

A. No, I had no——

Q. (Interposing) But you say, as I understood you, that you didn't hire Mr. Moore as attorney in the case? A. No, I didn't.

Q. You didn't hire Mr. Abel as attorney in the case? A. No, I didn't.

Q. You didn't hire Mr. Anderson in Los Angeles as attorney in the case? A. No, I didn't.

Q. You don't expect to pay for any attorneys' fees?

A. I don't know. If the case reverses and it falls on the plaintiffs I will probably pay my share.

Q. This complaint was verified by you on the 14th day of December, 1939, before Mr. Arney?

A. Yes, sir.

Q. Now, Doctor, I am not trying to mislead you or tangle you up. The dates are not so material except for this: Had you ever seen this complaint or discussed it with anyone before the date that you signed it before Mr. Arney?

A. Oh, yes.

Q. You had? A. Yes.

Q. With whom? A. With Ward Arney.

Q. How long before—more than a day or two?

A. Yes, several days.

Q. And it was the same complaint that you discussed with him which you afterwards signed?

(Deposition of Milton I. Higgens.)

A. Oh, yes, just like it.

Q. So that you didn't see the complaint nor have any discussion about it with anyone prior to the time it was sent to Mr. Arney for you to sign? Is that correct?

A. I had talked about it with Mr. Bateham.

Q. Did Mr. Bateham have a copy of the complaint with him? A. Yes.

Q. He did?

A. Yes, I think he is the one that presented it to me when I took it before my attorney.

Q. That was at the time when it was sent you as completed, ready for you to sign. Is that what you mean?

A. I don't think it was quite completed then.

Q. It wasn't? A. I don't think so.

Q. Who completed it?

A. I don't know, exactly, but it was through Mr. Bateham.

Q. You say Mr. Bateham gave it to you to take to Mr. Arney? A. To look it over.

Q. And you took it to Mr. Arney?

A. I looked it over and took it to Mr. Arney, yes.

Q. So the completed complaint, the first time you saw it, the completed complaint was turned over to you for your signature and after examining it you did sign it before your attorney; is that correct?

(Deposition of Milton I. Higgens.)

A. There were some—the first one there were a few minor changes, which were minor, if any, yes, but essentially that is correct.

Q. That is correct? A. Yes.

Q. Then the information that is in this complaint that you signed on the 14th day of December, 1939, was not furnished by you to Mr. Moore or to Mr. Abel? Is that correct?

A. Yes, that is correct.

Q. Then you don't know, I assume, then, who induced Mr. and Mrs. Sutherland and Mrs. Lorenz to become joint plaintiffs with you or how they happened to become plaintiffs?

A. I was under the impression that——

Q. (Interposing) No. I asked you if you know, not what your impression was.

A. No, I don't know.

Q. Do you know where the Sutherlands live?

A. No.

Q. Do you know where Mrs. Lorenz lives?

A. No.

Redirect Examination

Q. Did you and Mr. Bateham have any discussion as to your satisfaction or dissatisfaction with the condition of the affairs of the Mutual Gold and in the way it was being conducted?

A. Yes, we discussed it at length.

Q. And state whether you ever heard, from Mr. Bateham or anyone else, of a stockholders' com-

(Deposition of Milton I. Higgens.)

mittee that was taking an interest in the affairs of this corporation, Mutual Gold, in opposition to what was being done by the management and control. A. Had I heard of it?

Q. Yes. A. Yes, I had heard of it.

Q. Was that an organization of which Mr. Bateham was a member or chairman?

A. Yes, something like that. I don't know the details of it.

Q. Did Mr. Bateham refer to that? Did he or did he not in his talk with you, in the discussion of what the attitude of the stockholders was?

A. Yes, he discussed the attitude of the stockholders, yes, indeed.

Q. But you don't recall now, or do you recall that he referred to a committee of stockholders that were making it something of their business?

A. He did, he referred to it.

Q. Can you say any more definitely approximately how long you had this complaint that you subsequently signed under consideration or advisement as to its form and substance?

A. Well, as I recall, it must have been—I said days before, and if I say a week or ten days, as I recall, it was approximately that.

Q. Is it correct or incorrect to say that on that consideration you formed your own conclusions as to what you wanted to do as to signing?

A. That is correct.

(Deposition of Milton I. Higgens.)

Q. What is correct?

A. It is correct that while I had that under advisement my opinion was formed and I decided to sign it.

Q. Was that after consulting with your own attorney, Mr. Arney?

A. That is right, and after my own consideration of it.

Q. Did Mr. Arney go into any consideration as to the nature of the case and the reasons for your signing it, the advantages or disadvantages that might accrue to you from signing it?

A. He did discuss it with me.

Mr. Moore: I want to recall the doctor for a moment.

(Whereupon, Dr. M. I. Higgens was recalled and further testified as follows):

Redirect Examination

By Mr. Moore:

Q. One other question I want to ask you. Did you know, or had you ever received notice from the Mutual Gold or any other source of the bringing and pendency in Los Angeles of this what we call a title quieting suit that was brought by Mr. Garbutt, prior to the fact that it went to judgment by default?

A. No.

Q. You didn't know it until after it had gone to default?

A. I didn't what?

(Deposition of Milton I. Higgens.)

Q. You didn't learn that it had been brought until you learned that a judgment had been entered? A. No.

DEPOSITION OF MAYBELLE HIGGENS

Mrs. Maybelle Higgens, being first duly sworn by the Notary Public, W. R. Sampson, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Please state your full name for the record.

A. Maybelle Higgens, Coeur d'Alene, Idaho.

Q. Dr. Higgens, who just testified, is your husband? A. Yes.

Q. And you live at the same place in Coeur d'Alene, Idaho? A. Yes, sir.

Q. For the same number of years.

A. Yes.

Q. Are you the same Maybelle Higgens since named as one of the plaintiffs in this case?

A. I am.

Cross Examination

By Mr. Weller:

Q. Mrs. Higgens, did you have anything to do with the preparation of this complaint which was signed by your husband as one of the plaintiffs?

(Deposition of Maybelle Higgens.)

A. He discussed it with me.

Q. At the time or just prior to the time that he signed it? A. Yes.

Q. Did you ever see the complaint prior to a few days before it was signed when it was handed to your husband? A. No.

Q. Had you ever talked with Mr. Moore? Were you acquainted with Mr. Moore at that time?

A. No.

Q. Were you acquainted with Mr. W. H. Abel of Montesano? A. No.

Q. They are the attorneys named in the complaint in the action? A. Yes.

Q. You didn't know either of them?

A. No.

Q. Never had seen them? A. No.

Q. The only thing you knew about this complaint was that when it was handed to your husband, Dr. Higgens, for signing that you and he discussed it. Is that correct? That is all that you knew about the complaint?

A. I knew that it stood for the principles that I was standing for.

Q. And you knew also, Mrs. Higgens, that that principle that you were contending for was opposed by a majority of the outstanding stockholders of the Mutual Gold, did you not?

A. Yes.

(Deposition of Maybelle Higgens.)

Recross Examination

By Mr. Weller:

Q. You received notice of stockholders' meetings to be held at various times? A. Yes.

Q. You didn't attend any of them?

A. No.

Q. You didn't even send in your proxy to any of them, did you? A. I don't remember.

Q. I will ask you if it is not a fact that in these meetings, particularly the last two meetings which have been discussed here, on August 6, 1938 and February 1, 1939, that neither you nor Doctor sent in your proxies to be voted in favor of what you thought should be done at those meetings?

A. I couldn't tell you. We received so many of them, so many circulars, I wouldn't be able to tell.

Q. Would you say that you had sent them in?

A. No.

Q. Then, as I get it, Mr. Bateham asked you if you were willing to be a plaintiff in an action to be brought against the Mutual Gold Corporation, Garbutt, and the Log Cabin Mines and all the rest of them? Is that it?

A. After discussing it with me, yes.

Q. And you said that you would?

A. Yes.

Q. Did he tell you then that there were going to be other plaintiffs in the action? A. Yes.

Q. Did he tell you who they were?

A. I think so.

DEPOSITION OF A. P. BATEHAM

A. P. Bateham, being first duly sworn by the Notary Public, W. R. Sampson, was examined and testified as follows:

Direct Examination

By Mr. Moore:

Q. Your name is A. P. Bateham? A. It is.

Q. And you reside in Spokane? A. I do.

Q. How long have you lived here, Mr. Bateham, approximately? A. Oh, twenty years.

Q. Are you a stockholder in the Mutual Gold Corporation? A. I am.

Q. And about how long have you been such stockholder?

A. Oh, five or six years; I don't remember.

Q. And how much stock, if you recall, stands in your name?

A. I put that down on a paper or envelope and then didn't bring it over; 2000, I think; 2000 or 3000, maybe.

Q. What can you say in regard to an association of stockholders which has been broadly referred to as the Stockholders' Protective Association of the Mutual Gold minority stockholders? Do you know anything about such an organization?

A. Yes. It was formed at a meeting—at an adjourned meeting. The stockholders had convened in Dr. Collins' office, the office of the Mutual Gold, pursuant to a call which was afterwards rescinded.

(Deposition of A. P. Bateham.)

Those who came there adjourned over to my office in the Symons Block and discussed matters and near the close of the meeting it was moved and adopted that a stockholders' protective committee be named, of which I was to be chairman. Mr. Woodworth also was named as a member of the committee and I was to appoint another one, which I did, and I appointed Mr. C. H. Colby. That was the start of the committee, which was to take any action that seemed advisable in the interests of stockholders with respect to what we thought was a wrong action of the Board of Trustees of the Mutual Gold.

Q. Bearing in mind that Mr. Garbutt became active in the affairs of the Mutual Gold along about the first of September, 1938, about what time would you say this organization was formulated?

A. Well, it was in the fall of '38, as I remember. September, wasn't it? It was the date of that special meeting that was called after it was rescinded.

Q. When was that, sometime in the fall of '38?

A. Yes. I think it was in September. I went back to the office to get those record papers and I found them and then didn't bring them. I piled them up on the desk and went off.

Q. Were you chairman of that committee?

A. Yes.

Q. To what extent thereafter did you concern yourself as the chairman and as a stockholder of

(Deposition of A. P. Bateham.)

the Mutual Gold in the matter of doing what you thought was advisable for the protection of the best interests of the Mutual Gold?

A. Why, we had several meetings at which information was received from the Mutual Gold or its operations were discussed, and I think we agreed upon two letters that were sent out to all stockholders, and in order to carry on the suit to prevent the confirmation of their sale, of the directors' sale, I went up on behalf of the committee— We agreed that there should be a stockholder from outside of the state included in the plaintiffs, so I accordingly went up to Coeur d'Alene to see Dr. Higgens. That was the nearest place I could go to get a stockholder outside of the state, and most convenient place. I went up to present the matter to Dr. Higgens.

Q. You heard the doctor testify here today, or parts of it? A. Parts of it.

Q. And what is the fact as to whether your approaching Dr. Higgens was in furtherance of the purpose of this stockholders' association?

A. That was exactly the situation. I am quite positive that I told him that I came there on behalf of the committee because we wanted to get a plaintiff from outside of the state.

Q. You wanted to get a plaintiff anyway, whether it was outside or inside?

A. Yes.

Q. When did you first know anything of the

(Deposition of A. P. Bateham.)

pendency in California of a suit brought by Frank A. Garbutt to quiet title in the Log Cabin Mines Company to the purchase contract; that is, the contract that was made originally with Russell Collins and probably one or two others, that was an asset and is now taken to be an asset of the Mutual Gold? Did you know that there was such a suit?

A. A suit by Garbutt?

Q. A suit by the Log Cabin Mines Company, a California corporation, which started a suit to get judgment and decree subsequently by default? Did you know of that during its pendency?

A. No, I didn't know it until some time afterwards.

Q. Some time after it had gone to default, you mean, and judgment rendered?

A. Yes. You or Mr. Woodworth told me about it or showed me some report to that effect. I never knew of it before.

Q. You never knew of it before that? Do you know whether or not a purported copy of the judgment is set up as an exhibit to the Answer of the Mutual Gold in this pending case in which you are testifying?

A. No.

Q. You don't know that?

A. No. The Answer, you say?

Q. As a matter of record, there is attached as an exhibit to the Answer of Mutual Gold in this pending case a copy of that judgment, purported to be a copy, and it is pleaded as what lawyers call

(Deposition of A. P. Bateham.)

res judicata, that we are out of court and that the Court ought to go against us in this case. Did you know of that before that was done? A. No, sir.

Mr. Moore: I think that is all.

Cross Examination

By Mr. Weller:

Q. Mr. Bateham, you are the same A. P. Bateham who was one of the plaintiffs along with Dr. E. T. Richter in a suit brought in the spring, I believe, of 1939, against the Mutual Gold, Garbutt, Log Cabin Mines and possibly some others to quiet title to the Mutual Gold property?

A. Yes, sir. I remember signing the complaint as a plaintiff.

Q. Did you employ either of the attorneys in that action? A. Not myself, no.

Q. Who induced you and Dr. Richter to bring that action, Mr. Bateham?

A. Well, I don't know. I think there was—it might have been Mr. Moore, or Mr. Woodworth might have suggested it.

Q. You knew, did you not, that Joe Vance had brought two actions against the Mutual Gold at or about the same time that your action was brought?

A. Yes.

Q. Your action, as a matter of fact, was brought just almost identical in time with that of the second action brought by Mr. Vance, was it not?

(Deposition of A. P. Bateham.)

A. Well, I know it was around there somewhere. I don't know as to either one now.

Q. Did anyone consult with you in regard to the allegations that were made in the complaint in that action brought by you and Dr. Richter against the Mutual Gold and others?

A. Why, I think I consulted with lawyers about it.

Q. Did you ask any lawyers to start that action?

A. I told them I was willing to.

Q. Did you ask them to start it, is the question, Mr. Bateham.

A. I don't think I did.

Q. Do you know whether or not that action brought by you and Dr. Richter was instigated by Joe A. Vance?

A. Not that I know of.

Q. Or by Mr. Abel or Mr. Moore representing him?

A. Well, not by Abel or Vance. I know Mr. Moore is a close friend and attorney for myself in some respects and so is Mr. Woodworth, who is retained by our company all of the time, and I may have talked it over with them. I don't think anybody else.

Redirect Examination

By Mr. Moore:

Q. Mr. Bateham, you were quite active, it appears, in this stockholders' protective committee as chairman and so forth?

A. Why, I tried to be.

[Title of District Court and Cause.]

DEPOSITION OF FRANK A. GARBUTT

taken before Rose B. Cordarrens, a Notary Public in and for the County of Los Angeles, State of California, on August 25th, 1939, beginning at the hour of 10 a. m., at the offices of Frank A. Garbutt, Pantages Theatre Building, Los Angeles, California, pursuant to an order of court.

FRANK A. GARBUTT

being first duly sworn, testified as follows:

Direct Examination

By Mr. Hinckle:

Q. Have you had any experience in gold lode mining? A. Yes.

Q. Over how long a period has that experience extended? A. About 52 years.

Q. How old are you? A. Seventy-two.

Q. What training if any did you receive in mining engineering?

A. My father, who was a mining engineer, graduated from Harvard, and he taught me mining engineering.

Q. Was that private instruction? .

A. Private instruction.

Q. Did you do any work in the course of that instruction? Did you do any work under him as an engineer, engineering work? A. Yes.

Q. Where was that done?

(Deposition of Frank A. Garbutt.)

A. In Colorado and Southern California.

Q. In what counties in California?

A. San Bernardino County.

Q. What experience have you had in that kind of mining since then?

A. I have been engaged in mining, that kind of mining, and other kinds, off and on for 52 years.

Q. In what localities?

A. In California, in Lower California, Old Mexico, Arizona, Nevada, Utah, New Mexico, Colorado, Canada. That is all that occurs to me at the moment.

Q. In the course of that experience did you do any under ground mining work?

A. I worked under ground as a miner for about three years.

Q. Was that in California?

A. That was mostly in California.

Q. What experience if any have you had with stamp mills?

A. I have run them, repaired them; I have the trade of mill wright; I have examined a good many mills and I have worked as the mill man and as a mill superintendent; I have studied stamp mills as a mining engineer and I of course had to familiarize myself with stamp mills practice of the world. I had a little experience in Colorado.

Q. Is there a stamp mill located on the mining property in Mono County, California, which is described or referred to in the complaint in this case?

A. Yes.

(Deposition of Frank A. Garbutt.)

Q. What changes have you made in the mill, after you took charge of it?

A. We built a bin at the mine, and increased the capacity of the mill bin, which was improperly designed, took out the inclined belt conveyor and put in a flat belt conveyor, a bucket elevator. This was done on the advice of the mill man, Mr. Haley, after consultation with him in regard to that. I went to Mr. Haley to get him to run the mill last winter as I knew no one who would take the job in that climate and under those conditions, and he was represented as being a good man and recommended by Mr. Keily, the former superintendent of the mine and mill. Mr. Haley said he would not go——

Mr. Abel: Object to that as hearsay and not responsive.

A. He said that he would not want to take the job unless conditions were changed and the mill was changed and I told him I would not ask anybody to do that——

Mr. Abel: I object to that as not responsive and immaterial, self serving and hearsay.

A. (Continuing) —to run that old junk pile as it was and with some vehemence he said, “junk pile is right.” I told him I did not want to spend much money on it because it was temporary at best, and the purpose in running it was to learn more about the mine so as to select the proper equipment for it, and he then outlined the least

(Deposition of Frank A. Garbutt.)

amount of changes that would have to be made before he would take the job, and after going over it with him I concurred in his recommendations and we made the changes. I bought the material and he made the changes himself.

A. When we could keep the mill running, we crushed, or ground, or milled at the rate of 44 tons per 24 hours. That is the average rate.

Cross Examination

By Mr. Abel:

Q. What relation did you have to Alice Clark Ryan and the Chandis Securities Company, the owners of this mine?

A. Just what do you mean by that question? I don't just exactly get it. I was in no relation to them.

Q. Any business relation?

A. I was their representative negotiating the sale of Log Cabin Mines property to Collins Brothers.

Q. Were you the representative of the company, the Chandis Securities Company, Alice Clark Ryan and N. N. Clark, in reference to the assignment of the contract to Collins?

Q. And the various supplementary contracts?

A. Yes. They advised with me on those matters and usually followed my advice.

Q. Were you the agent in charge of this property?

(Deposition of Frank A. Garbutt.)

A. No. I had no charge of the property.

Q. Just what did you do for your principals, the owners of this Log Cabin mine?

A. They asked me to negotiate the sale of it and advise them in regard thereto and I acted in that advisory capacity without pay. They had both done me some favors and I was trying to show my appreciation.

Q. Did that service continue during the years that the contract was in force, did that relationship of yours continue? A. Yes.

Q. When did you personally come into possession of the Log Cabin mine, so called?

A. I undertook the management as I recall it shortly after my first trip to the property.

Q. For whom?

A. For The Mutual Gold Corporation.

Q. Was the management contract in writing?

A. The contract was a contract that was entered into between the Mutual and myself looking to my advancing some money for them.

Q. When did you commence to advance money under that contract?

A. I think I advanced the first money before I had a contract. I am not certain of that. I advanced them \$10,000. Whether that was before or after the contract I don't know. I told them I would find them \$10,000 to make that payment with, irrespective of whether we did business or not. They were at that time very much worried.

(Deposition of Frank A. Garbutt.)

Mr. Abel: I object to that as not responsive.

A. It is an explanation of my statement.

A. They were very much worried about a payment of \$10,000 due to the owners. They had expected to get the money from Mr. Vance and he had declined to put it up unless they signed a contract to his liking.

A. I told them I would advance this money whether or not they made an agreement, and so far as the payment was concerned they could look around and find somebody to do business with them who would be satisfactory to them and I would help them to do so.

Q. What is the entry entered on August 15th 1938, M. J. Keily, ticket to Seattle \$69.35?

A. If you will allow me to tell you I will explain it to you. Keily made up his mind to go on Sunday and he wanted to get off that night so I went down and bought the tickets for him and gave them to him, while he was getting ready to go. It was Sunday and I got the tickets for him.

Q. Did you have any other interest in his going other than just buying the tickets as a friendly accomodation?

A. Yes. I wanted to see him make the deal if he could; that would help out the stockholders of the Mutual Gold Corporation.

Q. Who was he representing at that time?

A. I think he was representing, as near as I

(Deposition of Frank A. Garbutt.)

can tell, I think he was representing Russell Collins and Mr. Ferbert. But, I am not sure.

Q. Was he representing Cecil B. De Mille?

A. At that time we were talking to De Mille, trying to interest him in the property.

Q. Who was talking to De Mille on that subject?

A. I was. Later on Mr. Keily talked to him.

Q. That was about the date of August 17th. Were you trying to buy the Log Cabin Mines at that time, in De Mille's name, or for De Mille?

A. Along about that time we were trying to interest Mr. De Mille in it.

Q. Who is "we"?

A. Myself, and the Log Cabin Mines Company through me.

Q. There wasn't any Log Cabin Mines Company at that time.

A. I mean the Mutual Gold. That is a lapsus linguae. I arranged an appointment between Mr. De Mille and Mr. Keily, and Mr. Keily talked to them about it and so did I.

Q. Did you draft a contract at that time, which was De Mille's offer, about that time?

A. Well, it was not De Mille's offer. It was a tentative proposition. We were trying to agree on it.

Q. Who is the "we" that were trying to agree?

A. Mr. De Mille, myself and the Mutual Gold Corporation.

(Deposition of Frank A. Garbutt.)

Q. At that time the Mutual Gold Corporation knew nothing about it, did they?

A. I told them I was trying to interest a party for them, and who the party was.

Q. Who did you tell and on what date?

A. I don't know; but the person I told them was C. B. De Mille.

Q. Then you did not tell any officer of the Mutual Gold Corporation?

A. I do not know what date it was that I disclosed the identity to them.

Q. When did you make the disclosure and to whom did you make it?

A. I do not recall. I was in contact with Russell Collins and Mr. Grill and I think Mr. Ferbert, so it must have been one of those.

Q. That was before the date Keily went to Seattle?

A. That I don't know. I haven't a good memory for dates. I never try to remember dates.

Q. Do you now observe that your ledger entry on August 17th, that you advanced the money for Keily to go to Seattle?

A. I presume that is correct. I do not confirm or deny it.

Q. Will you please read the entry out of the book? I do not wish you to take my statement for it.

A. They have an entry reading August 15th, M. J. Keily, ticket to Seattle \$69.35.

(Deposition of Frank A. Garbutt.)

Q. Were you ever re-imbursed for that advance?

A. I don't know.

Q. If you were re-imbursed by whom were you re-imbursed? A. That I don't know.

Q. Keily at that time had been, off and on, in your service, for 17 years?

A. No, he was not. I testified that he was in my service for 17 years, but after he left it he never came back again.

Q. What years was he in your service?

A. He left my service about six years prior to this time he went to make the contract—prior to this date, about six or seven years ago.

Q. What was Keily's mission to Seattle for which you advanced the ticket money?

A. He went up there I think, at the request of the Mutual Gold Corporation, to try to help them make a deal for the financing of their property, and at that time I had no interest in it, directly or indirectly, and I told them I did not want to make a deal with them.

Q. Who did you tell that to?

A. Russell Collins, and what-ever directors came down here. They were in my office and haunting me for several weeks, trying to get somebody to help them or go in with them and I told them I didn't want to.

Q. What weeks were they?

A. I don't remember. It was immediately prior to the time Keily went to Seattle. The last thing

(Deposition of Frank A. Garbutt.)

I wanted was any interest in the Log Cabin mine.

Q. Can you give us the names of any of the proposed purchasers of the Log Cabin Mine?

A. The only two I ever talked to about it—there were three. Cecil B. De Mille, and I talked to Hal Roach about it, but we never got to the point of making a contract; I also talked with Harry Chandler about it. They wanted to interest him and I got him in contact with Keily and we urged him to do something for Mutual Gold and he declined and said he did not want any part of it.

Q. When was that?

A. It was about the same time.

Q. Was he informed of the status of the property?

A. He was informed of everything about it I knew. Irrespective of that, he said that he was a seller, not a buyer, and did not want anything to do with mining. I got him to come to my office to discuss the matter with Mr. Keily. He came here as a favor to me, and I urged Mr. Chandler to come to the rescue of Mutual Gold Corporation, and try to save them from Mr. Vance, but, he said he was not interested in going into any mining ventures.

Q. When was your proposal drafted whereby you were to take over the Log Cabin?

A. I could not state the date but that occurred in this way—

Q. I am asking you as to the date.

(Deposition of Frank A. Garbutt.)

A. I don't know the date.

Q. Was it before or after you sent out the cancellation notice?

A. I don't know. I want to explain my answer because I want to explain the circumstances. The circumstances were these. Mutual Gold Corporation had urged me on numerous occasions to go with them and help them out and I had declined. I was at that time the representative of the owner and I had a primary duty to perform them. The Mutual Gold Corporation directors and officials informed me they were being driven into a contract with Mr. Vance, and that they did not want to go into it. I told them I would help them to the best of my ability to find a party who would go in with them and would help them to finance themselves. But they kept coming to me and urging me to prepare a contract and they said, "we are lost if we don't have some kind of a concrete proposition to present to our stockholders meeting that will be better than the Vance proposition." And I said, "well, I don't want any interest in your company. I don't want to go back into the mining business but I will yield to your urgings and make you a contract providing I can cancel it at any time I please without any personal liability. If that will serve your purpose I will then join with you in trying to find someone for you that will take my place and go on with it. That is the reason that particular contract was drawn.

(Deposition of Frank A. Garbutt.)

Q. When were those urgings on the numerous occasions of which you speak?

A. They extended up to the time that contract was drawn and for a number of weeks previous thereto. If I was guessing I would say six or seven weeks.

Q. Before what date?

A. Before the date that contract was entered into.

Q. You mean your contract?

A. The contract between Mutual Gold and me.

Q. That was on September the 2nd, wasn't it?

A. I don't remember.

Q. Have you got the contract? A. No.

Q. Can you refer to something and fix the date?

A. I don't know how I can at this moment, but that was the first contract that was made between Mutual Gold Corporation and myself.

Q. Did you talk to the owners about sending out the cancellation letter which for the purpose of this case I will assume is dated August 25th, 1938?

The Witness: I talked about it on several occasions but I do not recall whether I talked with them about it at the time it was sent out or not. We had numerous conversations about the conditions and what led to it.

Q. Would you then say you did or did not specifically talk to the owners Alice Clark Ryan and the Chandis Securities Company about sending

(Deposition of Frank A. Garbutt.)

out the cancellation letter dated August 25th, 1938?

A. I must have talked to them about it, although I never talked to the Chandis Securities Company. I talked with Harry Chandler, whom I contacted, and I told him, at what time I am not certain, that I was sending the letter out and I got their approval thereto.

Q. Did you tell them at that time you were negotiating to have the contract assigned to you?

A. I do not know whether I did or not.

Q. Did they know about it?

A. As to the dates—of course they knew about it, but as to when they knew about it I do not know.

Q. Did they object? A. To what?

Q. To your dealing, to get an assignment of the contract yourself?

A. They did, and they terminated my employment with them. They terminated my authority to represent them.

Q. Was that in writing? A. I think so.

Q. After that did you draft a letter for Mrs. Ryan to send to Mr. Vance?

A. Not that I know of. I did discuss with her some of the letters she sent to Mr. Vance.

Q. That was after you had ceased to represent her?

A. I do not know whether it was after or before.

Q. What did you discuss with her?

(Deposition of Frank A. Garbutt.)

A. They questioned me about the property and I told them what I thought. I have no definite recollection of that. That is no definite recollection now.

Q. When did you commence operating the mine in question?

A. For myself, or for the Log Cabin?

Q. Commence to operate it? When did you commence to operate it?

A. In the early fall of 1938.

Q. Can you fix the date?

A. No, only by entries in the books.

Q. You have a payroll account?

A. The payroll account will show when the payments were made, when the service was performed by the employees.

Q. Have you any record of that?

A. I can fix the date.

Q. Let's have the date you commenced to employ men in the operation of this mill. Not the date you paid them, but the date you employed them.

A. You can tell the period it is for.

Q. You have a report from the mine on that?

A. No. They didn't report for quite a while. They were very poor correspondents.

Mr. Carter: September the 10th to 30th.

Q. Will you please produce your record to show who were employed?

(Deposition of Frank A. Garbutt.)

Mr. Hinckle: Can you give it to him with the statement?

Mr. Carter: M. F. Haley and Russell Collins and J. R. Sturgeon.

Q. Assuming that you issued a letter under date of August 28th, 1938, to cancel the contract between the old owners, then held by Mutual Gold Corporation, and assuming further that August 27th your proposal to Mutual Gold Corporation was accepted, would you say that the contract of September 2nd, 1938, a copy of which is Exhibit D, represented your first agreement with Mutual Gold?

A. I do not get the force of that question. Do you mean did this represent our—yes, naturally.

Q. Do you recall a meeting in this office of yours on August 27th?

A. I do not know the date. Meeting with whom?

Q. J. A. Vance, Lloyd Vance, myself and Mr. Grill. Do you recall that meeting? A. Yes.

Q. At that time did you have a deed from the Mutual Gold? A. I don't know.

Q. When did you receive a deed from Mutual Gold to the mine here? A. I do not know.

Q. Have you the deed?

A. I think it was sent up to the Recorder to be certified, to get certified copies to go to the attorneys in this case for the trial of this case.

Q. Do you say that you do not have the original, or that you do have?

A. I do not think that I have the original.

(Deposition of Frank A. Garbutt.)

Q. Have you a copy? A. I may have.

Q. What consideration if any did you pay for the deed to the mining property here involved?

A. Well, the deed was made to me as I recall, as one to hold in trust, to transfer to the new corporation to be formed, when formed, and as security for the money I had advanced and was to advance.

Q. Do you say that those matters of that trust feature, or the advancing of money are mentioned in the deed? A. That I don't know.

Q. Will you swear that it was?

A. I don't know. The deed will speak for itself in that regard. I will say however, that about the time the deed was made and delivered that that was our understanding, that it was to be made and held in trust for that purpose.

Q. Was that understanding in writing?

A. I do not know.

Q. With whom did you have that understanding?

A. With the directors of the Mutual Gold, with whom I dealt.

Q. What directors?

A. There may have been several. Mr. Grill, Mr. Ferbert and Collins.

Q. When did you have that understanding?

A. At the time the deed was drawn and delivered.

Mr. Abel: Now, was there any change in the possession of this mine between the date of Sep-

(Deposition of Frank A. Garbutt.)

tember 2nd, 1938, and the date of November 1st, 1938?

A. To this extent: where previously I was operating for myself under the date of September 2nd and 22nd, I then operated for the Mutual Gold corporation and was carrying on the operation for them, as an accomodation, and advancing money for those things that they agreed should be done. In the first instance I was in possession acting under a contract, and in the second instance I was acting as representative under their instructions.

Q. From whom did you get the instructions?

A. From the Mutual Gold.

Q. Were those in writing? A. I think not.

Q. What person gave you the instructions?

A. It would be either Mr. Grill, Mr. Ferbert, or Mr. Stiegler.

Q. Neither of them were present personally with you?

A. I don't know. Mr. Ferbert was down here quite often.

Q. When?

A. He was down here for two or three months. I don't know the dates. He would come to my office occasionally.

Q. How did you carry your accounts with the state of California, your payroll reports to the state of California?

A. I would have to ask Mr. Carter about that but I think they were carried in the name of

(Deposition of Frank A. Garbutt.)

Mutual Gold. We carried them for a time in my name and I think it was changed after that to Mutual Gold.

Q. Do you testify to that from personal recollection?

A. That is my recollection. I can confirm it by asking Mr. Carter.

Q. Have you a record of the payments that you made to the State of California or any of its departments?

A. That will all come in the statement you are to get.

Q. In reference to the payroll, the old age insurance, unemployment insurance, etc.?

A. Yes. He may know from memory or he can look it up, which ever you prefer. My recollection is those payments were made in my name and then Mutual Gold and then later on by the Log Cabin, when the property was transferred to it, and the later contract went into effect.

Q. How many changes of management or possession has there been of this mining property since September the 1st 1938?

A. I first managed it as I recall for the Mutual, then under my contract with them, as it called upon me to do, then again for the Mutual then again for the Log Cabin. That is my recollection.

Q. When did you commence to manage the mining property here involved for the Mutual?

(Deposition of Frank A. Garbutt.)

A. That would be forthwith upon my withdrawal from the contract of September the 2nd.

Q. Didn't you start to spend money on this property before the contract of the 2nd of September, even?

A. I may have. I don't think so.

Q. Didn't you order a power line installed at an expense of \$11,000 before you had a contract?

A. That was done for the Mutual. I went out on a limb and did that. They said it would be all right to do it, but I had no contract. I was just taking a chance.

Q. Then you did incur an obligation for at least \$11,000 before you had a contract at all?

A. Yes. The situation was this. They were in desperate straights because if they did not work through the winter they would lose another year, and whoever operates the property had to have a power line, and at that time it was contemplated I would find them some party who would go in with them, and when I saw what kind of a mess it was, with Vance's lawsuit and litigation, I could not go to anybody and ask them to go in on it, because I could not recommend it.

Q. Did you advance that \$11,000 or incur an obligation of \$11,000 for a power line while you were operating for the owners on an existing contract that had been terminated and forfeited?

A. That I don't know. I advanced the money at

(Deposition of Frank A. Garbutt.)

that time or became obligated for it, for the Mutual, yes.

Q. When was the Mutual Gold relieved of the forfeiture notice of August the 25th?

A. I don't remember. It was done sometime later.

Q. How much later?

A. After your visit down here with Vance.

Q. Was it as much as five or six weeks later?

A. It may have been. I don't know.

Q. Then while the sword of forfeiture, the letter of August the 25th, was hanging over the head of Mutual, you, without any contract advanced \$11,000 or incurred an obligation of \$11,000 for Mutual?

A. Yes, and I have done the same thing with hundreds of others in other cases.

Q. Did you know that the forfeiture notice of August the 25th would not be insisted upon then?

A. No.

Q. Were you at that time assuming that it was effective legally, and terminated the contract which Mutual had with the owners?

A. If you will make the time more definite—I think the contract was forfeited and I think it was terminated.

Q. When was it given new life?

A. I don't know the date, but you at least have the notice, when the notice of termination was withdrawn.

(Deposition of Frank A. Garbutt.)

Q. Was there a notice of withdrawal of the forfeiture? A. Yes.

Q. Who sent it out?

A. I think Mr. Chandler and Mrs. Ryan.

Q. To whom? A. To The Mutual Gold.

Q. When? A. I don't know the date.

Q. How did you become familiar with that?

A. They told and Mutual Gold told me.

Q. When? A. I don't know.

Q. What persons told you that?

A. Mr. Grill.

Q. Did you prepare that notice?

A. I don't know.

Q. Do you now deny that you did prepare that notice?

A. I can't recall. I know at that time they relieved me of responsibility.

Q. Was that the time they discharged you as agent? A. About that time.

Q. Did the owners or Mrs. Alice Clark Ryan send you a notice, a letter which she sent to Vance?

A. Yes.

Q. Was that about the time the letter was sent?

A. It was about that time. I do not recall the chronology of it.

Q. You are handed a paper, a copy of a letter containing three sheets dated October 23rd, 1938, and I will ask you to state whether or not she was supplied with a copy of that letter or the original, purporting to be written by Alice Clark Ryan?

(Deposition of Frank A. Garbutt.)

A. Yes, I have seen that.

Q. When?

A. I imagine about the time it was written.

Q. Did you write it? A. No.

Q. Did you compose it?

A. No. I talked with Mrs. Ryan about it.

Q. Was it then written following your conversation? A. I imagine so.

Q. Did you sponsor the letter in any way?

A. I approved of it.

Mr. Abel: I offer in evidence a copy of the letter and will offer the original at a later date. It will be Exhibit G. You are now shown a letter headed Progress Report, dated September 23rd, 1938. Did you issue that instrument?

A. I wrote this, yes. Assuming it is a correct copy which I have no doubt of. This refreshes my mind. At that time I did not obligate myself for the \$11,000 but for \$500, which was the preliminary survey of the power company.

Q. In these several progress reports, between September 23rd and November 22nd, and January 8th, I notice that you make no reference or mention at all to the various shifts that had been made in these contracts. If that be so, why was it?

A. It was none of my business. I had no direct contact with the stockholders of Mutual Gold Corporation. Mutual Gold Corporation itself was fully advised of everything that occurred, and I made these reports at the request or desire of Mutual

(Deposition of Frank A. Garbutt.)

Gold, telling them things which they did not know, or if they did know, they did not know officially.

Q. Going back to the value of this property, you say you have spent how much on this property?

A. I would have to ask.

Q. In round figures?

A. I would say \$95,000 maybe.

Q. \$95,000? A. Probably.

Q. You consider that a valuable mine?

A. I do not know. I never told anybody I thought so. With two exceptions.

Q. You claim to have been an experienced and skilled mining engineer of over fifty years experience? A. Yes.

Q. Was it your judgment that this was a valuable mine? A. I do not know.

Q. Did you think so?

A. I thought it had possibilities. But, so far as I know I don't know what possibilities. I did not know then and I do not know now.

Q. Do you think it is valueless?

A. No, I do not think it is valueless, but I think a person can lose a lot of money on it.

Q. Have you had any mining engineer pass on this property? A. No.

Q. Not any?

A. Well, I got the so-called reports of Mr. Cole, and Mr. Keily, but they did not pass on it for me.

Q. Mr. Cole's report was brought to your atten-

(Deposition of Frank A. Garbutt.)

tion shortly before you got the contract of September 2nd?

A. Some time before that I saw it, but I did not take too much stock in that report. It had too many inconsistencies in it.

Q. But according to that report, that property was worth, with ore in sight, nearly two million dollars, according to the report?

A. As I recall it, it was a million and a quarter or a million and a half but whatever it was it was silly.

Q. Without making an examination yourself, you made a contract under which you were to control it?

A. That I would operate it. I have bought prospects before for cash, and spent money on them lots of times.

Q. When did you last spend money on this prospect? A. I am doing it today.

Q. Are you doing it as the owner?

A. I am doing it under my contract with Mutual Gold.

Q. How many times did Grill see you?

A. I don't know.

Q. Was Mr. Grill in your personal service?

A. No.

Q. Did you advance him any more than the \$150?

A. The \$150 was money I loaned the Mutual Gold Corporation. They wanted him down here

(Deposition of Frank A. Garbutt.)

and could not pay his way. I told them I thought he ought to be here and I told them I would advance the money and they borrowed it for that purpose.

Q. Did Mutual Gold ever get the money?

A. I paid him the check and charged Mutual Gold with it.

Q. You charged Mutual Gold with it?

A. Yes. I handed him the check myself, in the office, or mailed it to him.

Q. You took possession of Mutual Gold Corporation on or about September 2nd, 1938?

A. I do not recall the dates.

Q. You have been in physical possession of it ever since?

A. I have never been in physical possession since.

Q. You or your agents and those acting for you have at all times since had possession?

A. I employed the people who have been in actual possession during a considerable portion of the time.

Q. And you have paid them, at all times since September 2nd?

A. Part of the time personally; part of the time Log Cabin and Mutual.

Q. In all instances the money came from you?

A. Yes.

Q. You decided who should be employed and

(Deposition of Frank A. Garbutt.)

who should be discharged and how much they should receive, at all times since September 2nd?

A. I left the details of employment to the heads of the various departments.

Q. You selected the heads of departments?

A. Yes.

Q. And such interest, if any, that you received, was received by the deed of September 2nd, 1938, which was recorded November 7th, 1938, and that interest you have not reconveyed?

A. Oh yes I have.

Q. To whom?

A. To the Log Cabin Mines, on the order of Mutual Gold.

Q. Has the deed been recorded?

A. Yes.

Q. Are you sure about that? A. Yes.

Q. Then you are not retaining title for security for advances made by you? A. No.

Q. To whom did you execute and deliver the reconveyance?

A. To the Log Cabin Mines company.

Q. What person received the instrument?

A. Mr. Hinckle, I believe.

Q. He is your personal attorney?

A. He is also attorney for the Log Cabin Mines Company and I think he recorded the deed.

Q. The deed of September 2nd reached your possession on or about that date?

A. I don't know. In due course, anyway.

(Deposition of Frank A. Garbutt.)

Q. How do you explain that it was not recorded until November 7th, 1938?

A. I don't explain it.

Q. If it was withheld or not filed for recording until November 7th have you any explanation why it was not done? A. No.

Q. If it was recorded November 7th, or filed November 7th, you will note that was after the abrogation of the contract on which it depended?

A. We had a new agreement after that was abrogated in which I was to hold this for security for the money I had advanced and was to advance. That became the only security I had and about that time I recorded it. That agreement came within two days after the cancellation of the contract of September 2nd and 22nd.

[Title of District Court and Cause.]

DEPOSITION OF J. A. VANCE

J. A. Vance, being first duly sworn to testify the truth, the whole truth and nothing but the truth, deposed and said as follows:

Direct Examination

By Mr. Grill:

Q. Please state your name.

A. J. A. Vance.

Q. And what is your business, Mr. Vance?

A. Well, I have been in the lumber business.

(Deposition of J. A. Vance.)

Q. Are you retired at the present time?

A. Yes.

Q. What was your previous business, Mr. Vance?

A. Previous to the lumber business?

Q. No, what has your business been in the past, lumbering business? A. Lumbering business.

Q. For about how many years?

A. Oh, about thirty years.

Q. And that has been your primary business during your lifetime, has it? A. Yes.

Q. Were you one of the incorporators of the Mutual Gold Corporation? A. No.

Q. Were you connected with it at the time of the incorporation?

A. Well, I was connected with it shortly after the incorporation.

Q. Were you connected with it at the time that it acquired by contract or was acquiring by contract the Log Cabin Claims? A. No.

Q. The contract was made and transferred to the Mutual Gold before you became connected with the Mutual Gold Corporation?

A. At about that time.

Q. And did you become a director of the Mutual Gold Corporation about that time?

A. I think so.

Q. And continued as director up until about what date? Just give the year, that will be all right, Mr. Vance. A. '37, I think.

(Deposition of J. A. Vance.)

Q. I think it was—— A. Or '38.

Q. It was '37 or '38, anyway.

Mr. Moore: It will appear in the record, I take it.

Mr. Grill: I guess that is correct, yes.

Q. (By Mr. Grill) And were you likewise an officer of the corporation during substantially the same period of time?

Mr. Moore: Do you mean beginning at that time?

Mr. Grill: Yes. Beginning at the time you came into the corporation.

A. Yes, I think I was.

Q. You were vice-president for quite a considerable period of time? A. Yes.

Q. Then what occurred in 1936, the latter part of 1936?

A. Well, I had a contract with the Mutual Gold for to put the thing into production.

Q. How much money was raised at that time, if you recall?

A. \$30,000, of which a good part of it went to the office and pipe lines,—for frozen pipe lines.

Q. Do you recall of the \$30,000, Mr. Vance, how much went to the office?

Mr. Moore: All that line of testimony, and that question, is objected to as irrelevant and immaterial to any issue in this case.

(Question repeated by reporter.)

A. Well, there was something like \$2,800 and \$1,400,—there was about \$8,000,—I don't remember the exact amount.

(Deposition of J. A. Vance.)

Q. Well, just approximately to the best of your recollection?

A. About eight thousand and some dollars that was spent that way,—eight or nine thousand dollars, I don't know.

Q. And some \$22,000 expended on the property?

A. Yes.

Q. And do you recall how that was expended?

Mr. Moore: That question is objected to as too general and irrelevant and immaterial.

Q. (By Mr. Grill) Will you please state to the best of your recollection how the money was spent on the property?

A. Well, it was spent in fixing up the mill and developing ore.

Q. I will ask you whether or not you advanced any sums in addition to the \$30,000?

A. Yes.

Mr. Moore: Objected to as irrelevant, and immaterial, all that line of testimony, as to moneys expended by Mr. Vance or anybody else on the property,—that is all objected to on the same ground.

Q. (By Mr. Grill) Do you recall the amount; if so, just state it.

A. Well, it was \$8,000, and then there was about a thousand dollars or nine hundred, or a thousand dollars that was paid for labor when we shut down.

Q. And did you advance \$10,000 to the owners too?

A. Yes.

(Deposition of J. A. Vance.)

Q. And did this additional eight or nine thousand dollars which you mentioned go into the putting of the mill in operation?

A. Yes, and blocking out ore.

Q. Do you know how much was spent in blocking out ore?

A. Well, there was about \$8,000.

Q. Spent in blocking out ore? A. Yes.

Q. Was that during the period you were there, Mr. Vance, or afterwards?

A. That was after I left.

Q. Was the \$8,000 used after you left, or before?

A. No, that was used before I left.

Q. And when did you leave?

A. About December 12th, I think.

Q. So will you now say that the \$8,000 was used for blocking out ore from the time you went on the property until the time you left in December?

A. Yes, it was used in blocking out ore or fixing up the mill and things like that.

Q. So that there was approximately \$30,000 used in putting the mill in operation?

A. Yes.

Q. And connecting up the shaft——

A. And blocking out \$1,650,000 worth of ore.

Q. How do you arrive at that figure, Mr. Vance?

A. That estimate,—I think Russell Collins claimed that there was over \$2,000,000 worth of ore.

(Deposition of J. A. Vance.)

Q. Did you make that estimate yourself?

A. No.

Q. Then this million, six hundred thousand dollars worth of ore is then an estimate someone else made you? A. Yes.

Q. That was at the time you left, Mr. Vance, in December?

A. No, in the springtime, there was that much ore blocked out.

Q. Was that in the year of 1939?

A. '38,—the spring of '38, there was that much ore blocked out.

Q. Did you ever attempt to compute it yourself?

A. No, I didn't.

Q. Do you know how many feet of tunnels were there at that time?

A. About 650 feet, I should think, of tunnel on the lower level, and,—oh, there was a lot more tunnel than that.

Q. On various levels?

A. There was three levels. I don't know just how much there was. There must have been about fifteen hundred feet of tunnel altogether.

Q. Well, you didn't attempt to compute the ore yourself? A. No.

Q. Mr. Vance, can you tell us what your costs were per ton for milling the ore in the stamp mill?

A. No, I can't tell you now.

Q. Can you state approximately?

A. No, I can't.

(Deposition of J. A. Vance.)

Q. Can you state or will you state offhand the cost per ton of getting the ore to the mill?

A. No.

Q. You can't now state?

A. No, I can't.

Q. Can you state what your average recovery per ton was during the period of operation in which you were in there, August 17, 1937 to April 22, 1938?

Mr. Moore: You mean from memory?

Mr. Grill: Yes, to the best of his recollection.

A. Well, I don't know what the average was, but we paid expenses all the time.

Q. Can you state what your net profit per ton was, if you had a net profit?

A. I don't think there was any net profit to amount to anything at all.

Q. Was there any reason for that, Mr. Vance,—can you state any reason?

A. Well, you see we was not allowed to mill any ore except what we took out of the tunnels, according to the contract.

Q. Wasn't there some stoping done during that period? A. No.

Q. No stoping at all during that period?

A. Well, not any to amount to anything. I don't know just what there was, but there wasn't any stoping to amount to anything.

Q. Then I will ask you whether or not you mean that all of the ore that was run through the mill

(Deposition of J. A. Vance.)

came from the development work from the running of the tunnels? A. Yes.

Q. And not from any stoping, to the best of your recollection? A. Yes.

Q. And that, in your opinion, is the reason that there was no profit made? A. Yes.

Q. I will ask you whether or not in your report, gotten out in the latter part of December, 1937, of the Mutual Gold, giving activities of the company from September, 1937, to December 12, 1937, you did not state that the costs of mining and milling were excessive?

Mr. Moore: That is objected to as irrelevant, immaterial and not within the issues.

A. I don't remember anything about it.

Q. I will ask you whether or not in your opinion, in view of your experience with the property, you could have operated the stamp mill at a profit?

Mr. Moore: I object to that as the witness has not been qualified as an expert. He testified his whole life has been spent in the lumber business.

A. Well, if we had been allowed to stope, why we could have made a profit.

Q. How much of a profit, in your opinion?

Mr. Moore: The same objection.

A. Well, we could not have made the profit that we should have made if we had had a cyanide system in there, which Mr. Garbutt ran the mill for a year after we gave it up,—after I had given it

(Deposition of J. A. Vance.)

up, and he didn't use any cyanide system and it seemed to work all right.

Q. Did you lose very much time in repairs of the plant during your operation? A. No.

Q. Do you now recall what percentage of recovery of gold you had in your operation?

A. No, I don't remember what percentage there was. I haven't got that stuff. I had a book with that all in and somebody stole my book up at the hotel one time.

Q. How many tons of ore did you run through the mill during that period, or the average per day, approximately?

A. Oh, it is about forty ton, I think.

Q. You averaged, you believe, about forty tons during the period of your operation?

A. I think so.

Q. Do you know how much the loss was in the tailings?

A. Well, it was supposed to be about five dollars a ton.

Q. And how did you arrive at that figure?

A. Well, that was the assay of the tailings, I think.

Q. How many assays did you take during the period of your operation, or how many assays were taken during the period of your operation, if you know?

A. Well, there wasn't very many.

(Deposition of J. A. Vance.)

Q. You didn't have an assayer on the property?

A. No.

Q. Was the mill shut down in 1938?

A. Yes, it was shut down April 22nd,—it was shut down from then until September, I think it was, when Garbutt started it up.

Q. Well, it was shut down,—you don't know the date that Garbutt started?

A. I don't know what date he started——

Q. Well, that is not necessary. Did you visit the property during May or June of 1938?

A. Yes.

Q. Who accompanied you at that time?

A. Mr. Cole and Lloyd Vance.

Q. Who was Mr. Cole?

A. Mr. Cole was a mining engineer.

Q. Did he make an inspection of the property and an examination at that time?

A. Yes, sir.

Q. Was that made under your supervision?

A. Yes.

Q. Do you recall how many samples Mr. Cole took at that time?

A. Oh, about twenty-five or thirty. I don't know just how many.

Q. Is that your recollection, twenty-five or thirty? A. Yes.

Q. How long did he remain at the property?

A. I don't know how long he was there, a week or so.

(Deposition of J. A. Vance.)

Q. Did Mr. Cole spend a week or so on the property examining it? A. Yes.

Q. Can you now, Mr. Vance, recollect and state approximately how many tons of ore were supposed to be available or blocked out at that time?

A. Well, I can't tell you exactly. I don't know. I think there was 125,000 tons. That is just a guess on my part.

Q. That is of gold ore? A. Yes.

Q. And can you make any estimate as to the recoverable gold content of the block at that time,—the 125,000 tons? A. No, I could not.

Q. Do you know how much the ore ran, five or ten or fifteen dollars a ton?

A. It ran all the way from five to twelve dollars I think,—twelve or fifteen dollars. About five to fifteen dollars it ran.

Q. And can you give approximately the average,—your estimate?

A. It averaged about eight dollars, I think. And then there was about five dollars of that that went in the tailings,—or there was five dollars besides that that went in the tailings.

Q. Oh, you mean eight dollars of recoverable values then? A. Yes.

Q. And making an average then of about \$13 of gold content? A. Yes.

Q. Is your recollection sufficiently refreshed, Mr. Vance, to say approximately what your mining and milling costs would be per ton? A. No.

(Deposition of J. A. Vance.)

Q. Was it six or seven or eight dollars?

A. Somewhere close between six and eight dollars. We ran for two or three weeks there without putting any ore through at all, you might say. We were just developing and running tunnels and things that were necessary to be done.

Q. And had a certain amount of waste?

A. Yes. And it was forty to sixty percent waste in all of that.

Q. Forty to sixty percent waste? A. Yes.

Q. How much was the average of your waste through your operations?

A. Well, I don't know.

Q. You don't know what the average or approximate average would be? A. No.

Q. Do you recall, Mr. Vance, the total amount you received or the company received during your operation for gold sold to the mint or sold to the United States? A. No, I can't remember.

Q. You don't know approximately?

A. No, I don't.

Q. It is your recollection that you paid expenses?

A. We paid expenses after we got started and got the thing going once.

Q. And that continued up until April 22, 1938?

A. Yes.

Q. Did you submit a plan to the Mutual Gold or to its Board of Directors in 1938 for the construction of a new mill?

(Deposition of J. A. Vance.)

A. No, I don't think there was any plan.

Q. Well, then, did you submit an offer of some character to the Mutual Gold Corporation?

Mr. Moore: Objected to as irrelevant and incompetent.

Q. That is for the construction of a new mill?

A. Yes, we figured on a new mill.

Q. And what character of mill, Mr. Vance?

A. Cyanide,—a ball mill and a cyanide plant.

Q. Of what capacity?

A. Oh, it was about 250 tons; supposed to be guaranteed 100 tons.

Q. And what was the occasion for the recommendation or the offer to Mutual Gold of putting another or larger mill on the property?

A. Well, it would stand a bigger mill and it was necessary to have a cyanide plant in order to make the recovery. We could have bought a mill at that time with a cyanide plant and everything for \$20,000.

Q. Do you know the character of the cyanide plant?

A. Well, I don't know,—just cyanide, that is all.

Q. You don't know the kind of a plant it was at this time?

A. No. Just tanks and,—I don't know whether there is any difference in cyanide plants or not.

Q. About when was that offer made, Mr. Vance? During what month or months, if you recall?

(Deposition of J. A. Vance.)

A. About the 6th of August, I think.

Q. 1938? A. Yes.

Q. Now, do you now recall the terms of your offer? If you do, just state them to the best of your recollection.

A. It was not me that made the offer; it was my son.

Q. Were you interested in the offer?

A. Well, yes, I was interested in order to get my money out of it.

Q. Well, were you planning to put in some money yourself with your son? A. Yes.

Q. Well, that was really the joint offer of yourself and your son, wasn't it, made in his name?

A. Well, yes.

Q. (By Mr. Grill) A meeting of stockholders which you attended was held in September,—or August 6, 1938. You attended that meeting, didn't you, Mr. Vance? A. Yes.

Q. And do you know the financial condition of Mutnal Gold, or did you know it at that time?

A. Yes, sure.

Q. What was its condition?

A. Well, they didn't owe anything, only on the property.

Q. Did they owe you anything?

A. They owed me eighteen or nineteen thousand dollars, something like that.

Q. Did they owe any other people?

(Deposition of J. A. Vance.)

A. Well, I understood that they owed Ferbert and Steigler a little bit. And they owed Haley I think \$119.

Q. Did they owe Mr. Sturgeon anything at that time? A. Well, I think so.

Q. Was the company in any condition to pay its obligations at that time, during August and September, 1938?

A. Not in September. They were in August.

Q. They were in August?

A. I would have paid them myself.

Q. You mean under your new deal,—under your plan? A. Yes.

Q. Or the offer that your son submitted?

A. Yes.

Q. And did the company have any money to pay them at that time? A. No, I don't think so.

Q. (By Mr. Grill) When did the payment fall due to the owners of the property from the Mutual in 1938? A. November 1st.

Q. 1938? A. Yes.

Q. Did the Mutual have the money in August and September, 1938, to make that payment?

A. No, I don't think they did.

Q. Do you know of any way that the Mutual could have raised the money?

Mr. Moore: Same objection as immaterial and irrelevant.

A. Yes.

Mr. Moore: And asking for a conclusion.

(Deposition of J. A. Vance.)

A. I know a way they could have raised the money—if they had give us a contract for to put in the mill, we would have paid that off and we would have had,—we would have paid off the owners and paid ourselves up and had about \$120,000 in the bank at this time.

Q. Mr. Vance, I will ask you whether or not at the time of the erection of the stamp mill you were the manager or acting as the manager of the Mutual Gold Corporation? A. No, sir.

Q. Did you at any time act as manager except during the period that you had the contract to act as manager? A. That is all.

Q. Are you acquainted with all of the plaintiffs in this suit, Helen M. Southerland, Charles W. Southerland, Helen Maude Lorenz, M. I. Higgens and Maybelle Higgens?

A. Am I acquainted with them?

Q. Yes, do you know these plaintiffs?

A. Yes, I know all of them.

Q. Did you ever solicit Helen M. Southerland and Charles W. Southerland to become plaintiffs in this action?

Mr. Moore: Objected to as irrelevant and immaterial to any issue in this case.

A. Well, I wired Mrs. Southerland and asked her if she would, and she came back and said, "Yes."

Q. I will ask you whether or not you sent a telegram containing that language to Doctor and Helen

(Deposition of J. A. Vance.)

M. Southerland, 3692 West Marine Drive, Vancouver, B. C.?

A. I think so.

Q. And did you receive a reply?

A. Yes, I received a reply, but I don't know what it was now.

Q. Was it favorable or unfavorable?

A. It was favorable.

Q. I will ask you whether you sent a wire containing this language, under date of October 31, 1939, from Los Angeles, California, to Helen M. Southerland and Charles W. Southerland: "Re tel, please advise your status as citizens of Canada. Stop. This is because citizens of Washington cannot act as plaintiffs. Specific information needed as to naturalization. Wire collect via Western Union. Thanks, J. A. Vance."

Mr. Moore: I object to that as irrelevant and immaterial and not the best evidence.

A. I don't know. I don't know whether I ever sent that or not. I suppose I did.

Q. (By Mr. Grill) Mr. Vance, what attorney did you employ in this suit?

Mr. Moore: That is immaterial,—just a moment,—whether he employed any attorneys or not or who may have been his attorneys.

A. I employed W. H. Abel, and Mr. Moore.

Q. And did you employ Mr. Anderson in Los Angeles?

A. No, Mr. Abel employed him.

Q. Do you know of any stockholder of the Mu-

(Deposition of J. A. Vance.)

tual who has contributed to the expense of this litigation outside of yourself?

Mr. Moore: That is irrelevant and immaterial. This is a lawsuit for the use and benefit of the Mutual Gold, and it, in legal contemplation, is the plaintiff.

A. Oh, yes, several,—well, not several, but there has been a few of them.

Q. Will you give us their names, Mr. Vance?

Mr. Moore: Same objection.

A. Louisa Woodward.

Q. How much did she advance?

A. I don't know.

Q. And who else? A. Walter Pebbles.

Q. Do you know how much he contributed?

A. No.

Q. To whom did he make his contribution, if you know?

A. Well, I guess they made it direct to Mr. Abel.

Q. Do you recall anyone else?

A. No, not at the present time.

Q. Did you ever write any letters relative to this litigation to either Helen M. Southerland or Charles W. Southerland or any of the other plaintiffs that you now recall relative to this suit?

Mr. Moore: Objected to as irrelevant, immaterial and no bearing on this case or the issues thereof. A. I don't recall any.

Q. I will ask you whether or not you at any time ever wrote Mrs. Helen M. Southerland, the

(Deposition of J. A. Vance.)

plaintiff, a letter in which you agreed to pay all costs if she would not withdraw as a plaintiff, and pay her \$1 a share on her stock if you were successful in the litigation?

Mr. Moore: Same objection.

A. I don't think so.

Q. Would you say that you didn't

A. I don't think so.

Q. Did you ever visit her at Vancouver after the suit had been brought? A. Yes.

Q. Do you recall what time that was?

A. No, I don't

Q. Did you have any discussion relative to the suit? A. There was a little.

Q. Will you just state what the conversation was?

Mr. Moore: This all goes in under objection, I understand?

Mr. Grill: Yes, that is understood.

A. I don't know what it was now.

Q. Didn't you at that time promise to take care of all of the cost and expenses of the litigation?

A. I know I said that if we won the suit, why I would guarantee her \$1 a share for her stock.

Q. And you would pay all the costs of the litigation? A. Yes.

Q. I mean as far as the Southerlands were concerned.

A. As far as the settlements were concerned?

(Deposition of J. A. Vance.)

Q. As far as the Southerlands were concerned,
—as far as they were concerned? A. Yes.

Q. And did you make a trip and meet Helen
Maude Lorenz with reference to becoming a plain-
tiff in this suit? A. No.

Q. Did you send a wire to her?

A. I called her up on the telephone.

Q. And that was agreeable to her? A. Yes.

Q. And did you likewise promise her to take
care of the expenses as far as she was concerned,
and costs of the suit and say she would be held
harmless in costs or expenses?

A. Oh, I think so.

Q. Do you know whether or not a copy of the
complaint in this case was sent to either Helen
Southerland, Charles W. Southerland or Helen
Maude Lorenz? A. I think it was.

Q. You think a copy of it was sent?

A. Yes.

Q. Did you send it?

A. Oh, I don't remember now. But I don't—I
think I took a copy of it up there with me.

Q. Do you mean to Vancouver? A. Yes.

Q. Did the Southerlands ever want to with-
draw from this suit? A. I don't know.

Q. What was the occasion of your visit to Van-
couver to see them?

A. Well, Russell Collins and a fellow by the
name of Nelson had been around,—Russell Collins

(Deposition of J. A. Vance.)

had been up to see Helen Southerland and trying to get her to withdraw.

Q. And did she call you about it or write you?

A. I don't know whether she wrote me or called me.

Q. She contacted you, however, did she, do you recall?

A. I don't recall now.

Q. And did you contact the other plaintiffs, M. I. Higgins, Maybelle Higgins, about becoming plaintiffs in this suit?

A. No, sir.

Q. Who contacted them?

A. Mr. Bateham and Mr. Woodworth.

Q. (By Mr. Moore) You stated something to the effect that you were interested in that proposal,—in your son Lloyd's proposal?

A. Yes, I was interested.

Q. In a fatherly way, to see him succeed, is that what you mean, or what do you mean?

A. Well, both ways; financially and—

Redirect Examination

Q. You knew the amounts which were to be paid up, did you not?

A. \$70,000?

Q. Yes.

A. Yes.

Q. You knew what that was to be used for?

A. It was a guarantee.

Q. How do you mean, Mr. Vance, a guarantee?

A. Well, they figured on letting the other stockholders in on the proposal,—they could take stock in that company, the same as they had in the other company.

(Deposition of J. A. Vance.)

Q. And you expected to participate in it if it was obtained? A. Yes, I expect so.

[Endorsed]: No. 10078. United States Circuit Court of Appeals for the Ninth Circuit. Helen M. Sutherland, Charles W. Sutherland, M. I. Higgins, Maybelle Higgins and Helen Maude Lorenz, Appellants, vs. Frank A. Garbutt, Chandis Securities Company, a corporation, Alice Clark Ryan, Log Cabin Mines Company, a corporation, and Mutual Gold Corporation, a corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 6, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 10078

HELEN M. SUTHERLAND, CHAS W. SUTHERLAND, M. I. HIGGENS, MAYBELLE HIGGENS and HELEN MAUDE LORENZ,
Appellants,

vs.

FRANK A. GARBUTT, CHANDIS SECURITIES COMPANY, a corporation, ALICE CLARK RYAN, LOG CABIN MINES COMPANY, a corporation, and MUTUAL GOLD CORPORATION, a corporation,
Appellees.

STATEMENT OF THE POINTS UPON WHICH
APPELLANTS INTEND TO RELY ON
THIS APPEAL

1. All contracts entered into between appellee Mutual Gold Corporation, appellee Frank A. Garbutt and appellee Log Cabin Mines Company, and the transfer of substantially all the assets of Mutual Gold Corporation thereunder are ultra vires and beyond the powers of Mutual Gold Corporation.

2. The various contracts between Mutual Gold Corporation and Frank A. Garbutt, and between said parties and Log Cabin Mines Company, and the transfer of substantially all the assets of Mutual Gold Corporation thereunder, purportedly

made pursuant to or authorized by action of the stockholders of Mutual Gold Corporation, were made without the required notice of such proposed action and are therefore illegal and void.

3. The various of said contracts and transfers which purportedly were authorized by the board of directors of Mutual Gold Corporation were inadequately and improperly so authorized and are therefore illegal and void.

4. Said contracts and transfer were made upon a consideration which was not cash and are therefore illegal and void.

5. Said transfer of assets was equivalent to a sale of said assets.

6. The considerations for said contracts and said transfer are invalid.

7. The transfer of said assets was made without adequate provision for the payment of creditors of Mutual Gold Corporation or the consent of said creditors and is therefore illegal and void.

8. The Judgment of the District Court in approving said contracts and transfer upholds laws of the State of Washington which thereby impair the obligations of contracts of the stockholders of Mutual Gold Corporation, in violation of Section 10 of Article 1 of the Constitution of the United States and Section 23 of Article 1 of the constitution of the State of Washington.

9. The judgment of the District Court in approving said contracts and transfer upholds laws of the State of Washington which thereby impair the obli-

gations of contracts of the creditors of Mutual Gold Corporation, in violation of Section 10 of Article 1 of the Constitution of the United States and Section 23 of Article 1 of the constitution of the State of Washington.

10. The Judgment of the District Court in approving said contracts and transfer upholds laws of the State of Washington which thereby deprive the stockholders of Mutual Gold Corporation of property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 3 of Article 1 of the constitution of the State of Washington.

11. The Judgment of the District Court in approving said contracts and transfer upholds laws of the State of Washington which thereby deprive the creditors of Mutual Gold Corporation of property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 3 of Article 1 of the constitution of the State of Washington.

12. The making of said contracts and the transfer of said assets were entered into because of business compulsion and are therefore either void or voidable.

13. Those certain contracts and transfer of assets thereunder, made between Mutual Gold Corporation and Frank A. Garbutt, and that certain contract made between Mutual Gold Corporation, Frank A. Garbutt and Log Cabin Mines Company

(the creature corporation of Frank A. Garbutt), and transfer of assets thereunder, are illegal and void for the reason that said contracts were negotiated and entered into by Frank A. Garbutt both individually, as trustee for Mutual Gold Corporation, and on behalf of said Log Cabin Mines Company, and Frank A. Garbutt derived certain personal benefits thereunder.

14. Said contract between Mutual Gold Corporation, Frank A. Garbutt and Log Cabin Mines Company, and all transfers of said assets to said Log Cabin Mines Company, were illegal and void for the reason that said corporations had at said times certain common directors.

Dated: March 3, 1942.

W. H. ABEL,
O. C. MOORE,
FREDERICK D. ANDERSON,
By FREDERICK D. ANDERSON,
Attorneys for Appellants.

Address: 650 Subway Terminal Bldg., Los Angeles, Calif.
Telephone: MIchigan 0804.

Received copy of the within Statement of the Points Upon Which Appellants Intend to Rely on this Appeal this 4th day of March, 1942.

DAVID E. HINCKLE,
By DAVID E. HINCKLE,
Attorney for Appellees Frank A. Garbutt, Alice Clark Ryan, Log Cabin Mines Company and Mutual Gold Corporation.

Received copy of the within Statement of the Points Upon Which Appellants Intend to Rely on this Appeal this 4th day of March, 1942.

RICHARD G. ADAMS,
By RICHARD G. ADAMS,
Attorney for Appellee Chandis
Security Company.

[Endorsed]: Filed Mar. 6, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Appellants herein designate the following portions of the record, proceedings and documents transmitted to this Court by the Clerk of the District Court of the United States, for the Southern District of California, Central Division, to be contained in the record on appeal, to wit:

- I. Complaint.
- II. Plaintiff's Bill of Particulars.
- III. Answer of Frank A. Garbutt, Alice Clark Ryan and Log Cabin Mines Company.
- IV. Answer of Mutual Gold Corporation.
- V. Answer of Chandis Securities Company.
- VI. Reply of plaintiffs to Answer of defendant Mutual Gold Corporation.
- VII. Reply of plaintiffs to Answer of defendants Frank A. Garbutt, et al.

VIII. Memorandum of opinion and minute order thereon.

IX. Findings of Fact and Conclusions of Law.

X. Judgment.

XI. The following portions of the reporter's Transcript of proceedings had and testimony taken on the trial:

1. Page 39, line 18 to page 40, line 4, inclusive
2. Page 40, lines 12 to 26 inclusive.
3. Page 50, line 24, to page 51, line 3, inclusive.
4. Page 137, lines 14 to 19 inclusive.
5. Page 138, line 4 to page 139, line 19, inclusive.
6. Page 140, lines 6 to 16 inclusive.
7. Page 146, line 12 to page 148, line 17, inclusive.
8. Page 149, lines 2 to 9 inclusive.
9. Page 150, line 1, to page 152, line 21, inclusive.
10. Page 157, line 1, to page 158, line 4, inclusive.
11. Page 160, line 13, to page 162, line 5, inclusive.
12. Page 162, lines 15 to 22, inclusive.
13. Page 163, lines 11 to 17 inclusive.
14. Page 168, lines 1 to 26 inclusive.
15. Page 170, line 25, to page 171, line 17, inclusive.
16. Page 172, line 14 to page 173, line 20, inclusive.
17. Page 174, line 1, to page 175, line 4, inclusive.

18. Page 175, line 17, to page 177, line 8, inclusive.
19. Page 178, lines 1 to 8 inclusive.
20. Page 178, line 16, to page 179, line 14, inclusive.
21. Page 180, lines 1 to 7 inclusive.
22. Page 180, line 14, to page 181, line 4, inclusive.
23. Page 185, line 1, to page 188, line 7, inclusive.
24. Page 193, lines 1 to 5 inclusive.
25. Page 196, line 24, to page 198, line 8, inclusive.
26. Page 203, line 13, to page 204, line 10, inclusive.
27. Page 206, line 26, to page 207, line 14, inclusive.
28. Page 207, line 19, to page 208, line 5, inclusive.
- 28a. Page 221, lines 5 to 10 inclusive.
29. Page 231, line 26, to page 232, line 17, inclusive.
30. Page 234, lines 19 and 20.
31. Page 241, line 13.
32. Page 247, line 13, to page 248, line 5, inclusive.
33. Page 248, line 17, to page 250, line 22, inclusive.
34. Page 266, lines 1 to 18 inclusive.
35. Page 268, line 12, to page 271, line 7, inclusive.
36. Page 273, line 26, to page 274, line 6, inclusive.

37. Page 274, line 19.
38. Page 275, line 7, to page 281, line 11, inclusive.
39. Page 284, lines 5 to 24 inclusive.
40. Page 286, line 1.
41. Page 286, line 16, to page 287, line 14, inclusive.
42. Page 288, line 4, to page 290, line 15, inclusive.
43. Page 297, lines 1 to 24 inclusive.
44. Page 301, line 19, to page 302, line 7, inclusive.
45. Page 303, line 16, to page 304, line 13, inclusive.
46. Page 306, lines 17 to 22 inclusive.
47. Page 307, line 5.
48. Page 307, line 24, to page 308, line 2, inclusive.
49. Page 312, line 12, to page 313, line 1, inclusive.
50. Page 317, lines 10 to 16 inclusive.
51. Page 319, lines 11 to 14 inclusive.
52. Page 319, line 23, to page 320, line 5, inclusive.
53. Page 320, line 11, to page 322, line 21, inclusive.
54. Page 323, line 7, to line 24, inclusive.
55. Page 325, line 1, to page 326, line 8, inclusive.
56. Page 371, lines 1 to 6 inclusive.
57. Page 371, line 11, to page 374, line 5, inclusive.

58. Page 374, line 19, to page 375, line 16, inclusive.
59. Page 376, line 16, to page 381, line 5, inclusive.
60. Page 382, lines 14 to 18 inclusive.
61. Page 386, lines 13 to 25, inclusive.
62. Page 432, line 19.
63. Page 439, line 25, to page 442, line 16, inclusive.
64. Page 443, lines 3 to 14 inclusive.
65. Page 447, lines 5 to 9 inclusive.
66. Page 448, line 21 to page 449, line 13, inclusive.
67. Page 450, lines 5 to 17 inclusive.
68. Page 455, line 23, to page 458, line 23, inclusive.
69. Page 459, line 11, to page 462, line 22, inclusive.
70. Page 463, lines 15 to 20, inclusive.
71. Page 464, lines 19 to 26, inclusive.
72. Page 469, line 19.
73. Page 470, lines 1 to 14, inclusive.
74. Page 474, line 5, to page 476, line 13, inclusive.
75. Page 478, line 17, to page 479, line 19, inclusive.
76. Page 484, line 17, to page 485, line 5, inclusive.
77. Page 498, lines 1 to 3, inclusive.
78. Page 499, line 5.

79. Page 499, line 23, to page 500, line 3, inclusive.

80. Page 501, line 17.

81. Page 502, line 22, to page 503, line 14, inclusive.

82. Page 507, line 16, to page 510, line 2, inclusive.

83. Page 511, lines 5 to 18, inclusive.

84. Page 512, lines 10 to 20, inclusive.

85. Page 524, line 1, to page 525, line 12, inclusive.

86. Page 530, line 14, to page 531, line 23, inclusive.

87. Page 534, lines 1 to 4, inclusive.

88. Page 535, lines 5 to 17, inclusive.

89. Page 536, lines 6 to 22, inclusive.

XII. Exhibits introduced at the trial by plaintiffs, as follows, to wit:

No. 1. Articles of Incorporation of Mutual Gold Corporation, together with the by-laws attached thereto.

No. 5. Minutes of meeting of directors of Mutual Gold Corporation held July 18, 1938.

No. 6. Notice of annual meeting of stockholders of Mutual Gold Corporation. Date of meeting August 6, 1938.

No. 8. Letter dated July 20, 1938, from J. E. Stiegler, President, to Mutual Gold Corporation stockholders.

No. 9. Minutes of annual meeting of stockholders of Mutual Gold Corporation held August 6,

1938, together with letter dated August 5, 1938, from Lloyd J. Vance to the board of directors of Mutual Gold Corporation and draft of agreement, both attached thereto.

No. 10. Minutes of meeting of directors of Mutual Gold Corporation held August 6, 1938.

No. 11. Letter dated August 25, 1938, from Frank A. Garbutt to Mutual Gold Corporation.

No. 12. Letter dated September 2, 1938, from Frank A. Garbutt to Mutual Gold Corporation.

No. 14. Minutes of adjourned annual meeting of the board of directors of Mutual Gold Corporation dated September 7, 1938.

No. 15. Unsigned letter dated September 9, 1938, to Mutual Gold Corporation.

No. 16. Letter dated September 12, 1938, from J. E. Stiegler, President, to the stockholders of Mutual Gold Corporation.

No. 17. Notice of special meeting of the stockholders of Mutual Gold Corporation of September 24, 1938. (Writing on back of the exhibit is disclaimed as part of the exhibit. See Transcript, page 40, lines 16 to 19.)

No. 18. Form of proxy for the meeting of September 24, 1938. (Writing appearing on the exhibit is disclaimed as part of the exhibit. See Transcript page 40, lines 21 to 26.)

No. 19. Letter from J. E. Stiegler, President, dated September 16, 1938, to J. E. Stiegler and other directors of Mutual Gold Corporation.

No. 20. Letter dated September 12, 1938, from Frank A. Garbutt to M. F. Haley.

No. 21. Printed postcard dated September 20, 1938, from J. E. Stiegler, President, to stockholders of Mutual Gold Corporation.

No. 22. Minutes of special meeting of directors of Mutual Gold Corporation dated September 19, 1938.

No. 26. Progress report from Frank A. Garbutt to the board of directors of Mutual Gold Corporation, dated September 23, 1938.

No. 27. Letter from J. E. Stiegler, President, dated September 26, 1938, to the stockholders of Mutual Gold Corporation.

No. 28. Letter dated October 3, 1938, from Chandis Securities Company and Alice Clark Ryan to Mutual Gold Corporation.

No. 30. Minutes of special meeting of directors of Mutual Gold Corporation dated October 21, 1938.

No. 34. Minutes of special meeting of directors of Mutual Gold Corporation, dated November 7, 1938.

No. 39. Minutes of special meeting of board of directors of Mutual Gold Corporation, dated December 17, 1938.

No. 41. Minutes of fourth meeting of the board of directors of Log Cabin Mines Company, dated January 4, 1939.

No. 42. Printed progress report dated January 8, 1939, from Frank A. Garbutt, to the board of

directors of Mutual Gold Corporation and Mr. J. E. Stiegler, President.

No. 43. Printed letter from Mutual Gold Corporation, dated January 14, 1939, to the stockholders of Mutual Gold Corporation.

No. 44. Minutes of the fifth meeting of the board of directors of Log Cabin Mines Company, dated March 6, 1939.

No. 60. Schedule of directors and officers of Log Cabin Mines Company.

No. 62. Letter dated November 5, 1938, from Frank A. Garbutt to M. F. Haley.

No. 83. Letter dated October 22, 1938, from Frank A. Garbutt to M. F. Haley.

No. 84. Letter dated November 19, 1938, from Frank A. Garbutt to M. F. Haley. (Writing on the back of the exhibit is disclaimed as a part thereof. See Transcript page 187, lines 9 to 13, and page 188, lines 1 to 7, inclusive.)

No. 91. Series of letters between Mr. Garbutt and Mr. Grill dated from April 15, 1939, to June 8, 1939, inclusive, consisting of three letters to Mr. Grill and four letters to Mr. Garbutt.

No. 94. Notice of annual meeting of stockholders of Mutual Gold Corporation to be held February 1, 1939.

No. 95. Proxy form solicited by management for stockholders' meeting of Mutual Gold Corporation to be held February 1, 1939.

No. 98. Letter of August 12, 1938, to board of

directors of Mutual Gold Corporation from Lloyd J. Vance at Seattle, Washington.

XIII. Exhibits introduced at the trial by defendants, as follows, to wit:

“J” Agreement dated August 23, 1939, between Mutual Gold Corporation, first party, Frank A. Garbutt, second party, and Log Cabin Mines Company, third party.

“L” Carbon copy of letter dated January 12, 1939, to William L. Grill from Frank A. Garbutt.

“O” Assignment of contract by Frank A. Garbutt to Log Cabin Mines Company, dated March 10, 1939.

XIV. The following portions of the deposition of Helen Maude Lorenz:

1. Question No. (1), and answer thereto.
2. Questions No. (8) to (22) inclusive, and the respective answers thereto.
3. Questions Nos. (25) and (26) and the respective answers thereto.

XV. The following portions of the deposition of Helen M. Sutherland:

1. Page 2, lines 3 to 9 inclusive.
2. Page 3, lines 13 to 15 inclusive.
3. Page 6, lines 1 to 10 inclusive.
4. Page 7, lines 10 to 25 inclusive.
5. Page 8, line 15 to page 9, line 8 inclusive.

XVI. The following portions of the deposition of M. I. Higgens:

1. Page 21, lines 9 to 26 inclusive.
2. Page 23, lines 9 to 29 inclusive.
3. Page 24, lines 1 and 2.

4. Page 24, line 26, to page 25, line 4, inclusive.

5. Page 50, lines 17 to 19 inclusive.

6. Page 55, line 20, to page 56, line 4, inclusive.

XVII. The following portions of the deposition of Maybelle Higgens:

1. Page 43, line 20, to page 44, line 5, inclusive.

2. Page 47, lines 18 and 19.

3. Page 48, lines 5 to 21 inclusive.

XVIII. The following portions of the deposition of A. P. Bateham:

1. Page 56, lines 21 to page 57, line 10, inclusive.

2. Page 57, line 21, to page 58, line 22, inclusive.

3. Page 60, line 21, to page 62, line 2, inclusive.

4. Page 72, lines 1 to 6, inclusive.

XIX. The following portions of the deposition of Frank A. Garbutt in the case of "J. A. Vance vs. Mutual Gold Mining Company" in the Superior Court of the State of Washington, in and for the City of Spokane, No. 103068, to wit:

1. Page 2, lines 12 to 17, inclusive.

2. Page 3, lines 1 and 2.

3. Page 31, lines 19 and 20.

4. Page 39, lines 3 and 4.

5. Page 39, lines 8 to 16, inclusive.

6. Page 39, line 18 to page 40, line 8, inclusive.

7. Page 40, lines 12 to 19 inclusive.

8. Page 49, line 26, to page 50, line 8, inclusive.

9. Page 50, line 20, to page 51, line 4, inclusive.

10. Page 59, line 21, to page 62, line 9, inclusive.

11. Page 86, line 20, to page 87, line 18, inclusive.

12. Page 88, line 14, to page 92, line 23, inclusive.

13. Page 105, line 3, to page 106, line 7, inclusive.

XX. Notice of Appeal.

XXI. Statement of the points upon which appellants intend to rely on this appeal.

XXII. This designation of contents of record on appeal.

Dated: March 3, 1942.

W. H. ABEL,
O. C. MOORE,
FREDERICK D. ANDERSON,
By FREDERICK D. ANDERSON.

Attorneys for Appellants.

Address: 650 Subway Terminal Bldg., Los Angeles, Calif.
Telephone: MIchigan 0804.

Received copy of the within Designation of Contents of Record on Appeal this 4th day of March, 1942.

DAVID E. HINCKLE
By DAVID E. HINCKLE

Attorney for Appellees Frank
A. Garbutt, Alice Clark Ryan,
Log Cabin Mines Company
and Mutual Gold Corporation.

Received copy of the within Designation of Contents of Record on Appeal this 4th day of March, 1942.

RICHARD G. ADAMS
By RICHARD G. ADAMS

Attorney for Appellee Chandis
Securities Company.

[Endorsed]: Filed Mar. 6, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL PARTS OF
THE RECORD THOUGHT TO BE MATERIAL BY APPELLEES FRANK A. GARBUTT, ALICE CLARK RYAN, MUTUAL GOLD CORPORATION, AND LOG CABIN MINES COMPANY.

Appellees Frank A. Garbutt, Alice Clark Ryan, Mutual Gold Corporation, and Log Cabin Mines Company, designate the following parts of the record which they think material in addition to those parts designated by the appellants under date of March 3, 1942 and served on said appellees on March 4, 1942:

I.

The following portions of the Reporter's Transcript of Proceedings had and testimony taken at the trial:

1. Page 69, line 23, beginning with "If," to page 70, line 18, inclusive.
2. Page 106, lines 13 to 24, inclusive.
3. Page 108, lines 10 and 11.
4. Page 112, lines 10 to 20, inclusive.
5. Page 140, line 17, to page 145, line 21, inclusive.
6. Page 148, lines 19 to 24, inclusive.
7. Page 153, lines 1 to 24, inclusive.
8. Page 154, lines 2 and 3, and lines 12 to 26, inclusive.
9. Page 158, line 5, to page 160, line 12, inclusive.

10. Page 163, lines 4 to 9, inclusive, and line 18, to page 165, line 15, inclusive.
11. Page 167, lines 2 to 5, inclusive, and lines 9 to 16, inclusive.
12. Page 171, line 18, to page 172, line 13, inclusive.
13. Page 175, lines 5 to 16, inclusive.
14. Page 193, line 24.
15. Page 194, lines 3 to 17, inclusive.
16. Page 195, lines 3 to 16, inclusive.
17. Page 199, lines 4 to 11, inclusive, and lines 20 to 23, inclusive.
18. Page 200, lines 1 to 15, inclusive.
19. Page 202, lines 3 to 24, inclusive.
20. Page 203, lines 11 and 12.
21. Page 204, line 11, to page 205, line 6.
22. Page 225, line 22, to page 226, line 6, inclusive.
23. Page 229, line 4, to page 230, line 6, ending with the word "payment."
24. Page 232, line 18, to page 234, line 3, inclusive.
25. Page 234, lines 13 to 18, inclusive.
26. Page 234, lines 25 and 26.
27. Page 235, lines 17 and 18.
28. Page 236, lines 9 to 12, inclusive.
29. Page 236, line 25, to page 237, line 15, inclusive.
30. Page 238, line 15, to page 239, line 6, inclusive.
31. Page 242, lines 15 to 20, inclusive.

32. Page 245, lines 10 to 26, inclusive.
33. Page 251, lines 1 and 2, and lines 5 to 7, inclusive.
34. Page 253, line 11, to page 254, line 19, inclusive.
35. Page 266, line 19, to page 268, line 11, inclusive.
36. Page 271, lines 9 to 15, inclusive.
37. Page 272, line 23, to page 273, line 25, inclusive.
38. Page 274, lines 10 to 16, inclusive.
39. Page 285, lines 4 to 9, inclusive.
40. Page 286, lines 2 to 15, inclusive.
41. Page 298, line 3, to page 301, line 18, inclusive.
42. Page 302, line 8, to page 303, line 8, inclusive.
43. Page 306, lines 8 to 13, inclusive.
44. Page 308, lines 11 to 16, inclusive.
45. Page 309, lines 7 to 14, inclusive.
46. Page 310, line 8, to page 312, line 11, inclusive.
47. Page 313, lines 7 to 9, ending with word "top."
48. Page 314, line 9, to page 315, line 12, inclusive.
49. Page 316, line 14, to page 317, line 6, inclusive.
50. Page 323, line 25, to page 324, line 9, inclusive.
51. Page 326, lines 1 to 8, inclusive.

52. Page 327, line 1, to page 328, line 15, inclusive.

53. Page 328, line 21, beginning with "Isn't," to line 24, inclusive.

54. Page 329, lines 10 and 11.

55. Page 329, line 25, to page 330, line 13, inclusive.

56. Page 334, line 4, to page 335, line 1, inclusive.

57. Page 344, lines 3 to 24, inclusive.

58. Page 345, line 9.

59. Page 346, lines 1 to 3, inclusive.

60. Page 346, line 21, to page 347, line 8, inclusive.

61. Page 352, line 13.

62. Page 354, lines 2 to 11, inclusive.

63. Page 354, line 16, to page 355, line 1, inclusive.

64. Page 359, lines 4 to 26, inclusive.

65. Page 360, lines 6 to 8, inclusive.

66. Page 360, line 14, to page 361, line 5, inclusive.

67. Page 381, line 16, to page 382, line 13, inclusive.

68. Page 383, line 26, beginning with "The," to page 386, line 12, inclusive.

69. Page 386, line 26, to page 387, line 24, inclusive.

70. Page 388, lines 8 to 10, inclusive.

71. Page 389, line 13, to page 390, line 7, inclusive.

72. Page 390, line 18, to page 391, line 21, inclusive.
73. Page 393, lines 12 to 22, inclusive.
74. Page 404, line 19, to page 405, line 1, inclusive.
75. Page 426, lines 15 and 16, and lines 22 to 26, inclusive.
76. Page 427, lines 1 to 24, inclusive, ending with "it."
77. Page 428, line 14, to page 431, line 22, inclusive, ending with "time."
78. Page 432, line 20, to page 433, line 10, inclusive.
79. Page 442, line 17, to page 443, line 2, inclusive.
80. Page 454, lines 11 to 22, inclusive.
81. Page 462, line 23, to page 463, line 14, inclusive.
82. Page 463, line 21, to page 464, line 18, inclusive.
83. Page 465, line 2, to page 469, line 17, inclusive.
84. Page 488, line 1, to page 489, line 8, inclusive.
85. Page 510, lines 3 to 21, inclusive.
86. Page 515, lines 1 to 26, inclusive.
87. Page 518, line 1, to page 523, line 4, inclusive.
88. Page 525, line 14, to page 526, line 3, inclusive.
89. Page 532, lines 1 to 20, inclusive.

90. Page 533, lines 1 to 7, inclusive.
91. Page 537, lines 4 to 23, inclusive.
92. Page 539, line 1, to page 540, line 5, inclusive.
93. Page 549, lines 1 to 12, inclusive.

II.

Exhibits introduced by plaintiffs at trial as follows:

No. 7 Form of proxy.

No. 36 J. E. Stiegler's letter of December 1, 1938 to Mutual Gold Corporation Stockholders.

No. 37 Minutes of Mutual Gold Corporation's directors' meeting of December 9, 1938.

No. 38 Minutes of Mutual Gold Corporation's directors' meeting of November 28, 1938.

No. 63 Copy of draft of agreement proposed by the Vances.

Parts of No. 90; to-wit, the minutes of the annual meeting of the Stockholders of Mutual Gold Corporation held on February 1, 1939.

III.

Exhibits introduced at the trial by defendants as follows:

No. B. Letter undated from Mr. Vance to the Stockholders of Mutual Gold Corporation.

No. C. Letter dated January 21, 1939 from Mr. Vance to noteholders of Mutual Gold Corporation.

No. E. Letter of September 20, 1938 by Charles Dunn and others to Stockholders of Mutual Gold Corporation, together with proxy form.

No. F. Letter of January 30, 1939 by A. P. Bateham to Charles Blank.

No. G. Letter dated Spokane, Washington, September 13, 1938, signed by R. P. Woodworth and others, to Stockholders of Mutual Gold Corporation.

No. H. Letter dated Seattle, Washington, September 17, 1938, signed by N. D. Showalter and others, to Stockholders of Mutual Gold Corporation.

No. I. Report of Stockholders' Protective Committee, dated Spokane, Washington, January 20, 1939, signed by A. P. Bateham, addressed to Stockholders Mutual Gold Corporation.

No. Q. Letter dated December 10, 1938, to Frank A. Garbutt, signed by Mutual Gold Corporation.

No. R. Letter dated April 12, 1939, to Frank A. Garbutt, signed by J. E. Stiegler.

No. S. Copy of Judgment roll in Superior Court case No. 440-367, Log Cabin Mines Company v. Mutual Gold Corporation.

No. T. Judgment roll in case No. 103-067, in Superior Court of State of Washington, J. A. Vance, et al., v. Mutual Gold Corporation.

IV.

Exhibits introduced at the trial by cross-complainant as follows:

No. U. Letter from Frank A. Garbutt of July 8, 1940 to Directors of Mutual Gold Corporation. Include date, heading, addressee, and salutation. Skip to second page, last paragraph beginning "In

reporting the milling results—" Include said paragraph and everything thereafter to and including the paragraph about the middle of the third page beginning "The average assay value is \$4.52." Skip to and include the signature.

No. V. Letter dated Los Angeles, California, February 15, 1941, to Richard G. Adams, from Frank A. Garbutt.

No. W. Letter dated Los Angeles, California, February 5, 1941, to Mr. Harry Chandler, Alice Clark Ryan, from Frank A. Garbutt.

V.

The following parts of the deposition of Helen M. Sutherland:

1. Page 10, lines 20 to 24, inclusive.
2. Page 11, lines 5 to 15, inclusive.
3. Page 12, lines 2 to 4, inclusive.
4. Page 12, line 11, to page 13, line 7, inclusive.

VI.

The following parts of the deposition of M. I. Higgins:

1. Page 25, line 23, to page 27, line 21, inclusive.
2. Page 28, line 17, to page 29, line 10, inclusive.
3. Page 29, line 26, to page 30, line 6, inclusive.
4. Page 31, lines 14 to 24, inclusive.
5. Page 34, lines 20 to 23, inclusive.
6. Page 35, lines 4 to 11, inclusive.
7. Page 37, line 10, to page 38, line 3, inclusive.

VII.

The following parts of the deposition of Maybelle Higgs:

1. Page 44, line 18, to page 45, line 21, inclusive.

VIII.

The following parts of the deposition of A. P. Bateham:

1. Page 58, line 23, to page 59, line 18, inclusive.
2. Page 62, lines 11 and 12.
3. Page 63, lines 8 to 29, inclusive.

IX.

The following parts of the deposition of Frank A. Garbutt; case of Vance v. Mutual Gold Mining Company:

1. Page 3, lines 3 and 4.
2. Page 5, lines 6 to 9, inclusive.
3. Page 14, line 10, to page 15, line 13, inclusive.
4. Page 22, lines 21 to 23, inclusive.
5. Page 40, line 20, to page 41, line 3, inclusive.
6. Page 41, line 11, beginning with "I told," to line 15, inclusive.
7. Page 50, lines 9 to 19, inclusive.
8. Page 51, line 5, to page 52, line 26, inclusive.
9. Page 76, line 7, to page 78, line 1, inclusive.
10. Page 96, line 23, to page 98, line 5, inclusive.
11. Page 98, line 22, to page 99, line 5, inclusive.
12. Page 103, lines 1 to 16, inclusive.
13. Page 106, lines 8 to 14, inclusive.

X.

The following parts of the Deposition of G. H. Ferbert:

I am a Stockholder of Mutual Gold Corporation and have been one continuously since the fall of 1933. I own about 90,000 shares. From the time I first took stock in 1933, up until through the fall of 1937, I made advances and took treasury stock for them. I also bought a hundred thousand shares of stock at a cent a share, and I bought some at a cent and a half a share. I sold this stock for what I paid for it, and there was no profit in it and no loss. I was elected a director of the corporation in 1936 and took the directors' oath in August, 1938. I have been one continuously since. The corporation owes me, I think, between \$1,200 and \$1,300 which I have advanced since May, 1938. I advanced moneys to pay lumber bills, the Lone Pine Lumber Company, Bishop Hardware Company in Mono County, California, watchman's wages to Mr. Sturgeon, and minor bills in Spokane for the office. I advanced money to the office, and they paid it out for bills, whatever they were. I am conversant with the business affairs of the corporation, and have been since I became a Stockholder, and especially since I became a director.

The corporation needed new mining equipment but did not have the money to buy it, or to operate with the old equipment. It did not have the money to pay an installment of \$10,000.00 falling due on November 1, 1938 to the owners. I did not know of any way by which it could raise any more money.

Lloyd Vance made a written offer to the Board of Directors to finance the company on certain conditions, but I did not favor it. I proposed to go to California and get a contract with Frank A. Garbutt or some one that he would interest for us. I went to Los Angeles with Mr. Stiegler and Mr. Grill—I believe Mr. Collins was down there—to see Mr. Garbutt about that contract. As director, I voted for the Garbutt contract in preference to the Vance contract. I based my opinion on the man himself. I wanted him on account of his experience. He had been at mining for a lifetime and he was financially responsible, and I thought we would get a fair deal.

The Stockholders' meeting of September 24, 1938 was called off upon advice of counsel, who stated that the Stockholders had already conferred all the powers they had upon the board. No further power was necessary. I paid my own expenses as director. They consisted of traveling expenses to Yakima, Spokane and Seattle, railroad fares to Los Angeles, hotel bills, telephone, telegraph, tolls. I have never been repaid. Mr. Garbutt never advanced me any money in connection with his dealings with Mutual Gold Corporation property.

1. Page 17, line 1, to page 18, line 1, inclusive.
2. Page 18, line 22, to page 19, line 1, inclusive.
3. Page 21, line 25, to page 22, line 10, inclusive.
4. Page 24, line 1, to page 25, line 1, inclusive.
5. Page 27, line 19, to page 28, line 7, inclusive.
6. Page 29, line 16, beginning with "Were", to page 30, line 1, inclusive.

7. Page 35, line 12, to page 36, line 24, inclusive.
8. Page 37, line 17, to page 38, line 23, inclusive.
9. Page 39, line 15, to page 40, line 1, inclusive.
10. Page 40, line 16, to page 41, line 1, inclusive.

XI.

The following parts of the Deposition of J. H. Vance:

1. Page 2, lines 1 to 21, inclusive.
2. Page 2, line 27, to page 4, line 3, inclusive.
3. Page 13, line 18, to page 14, line 18, inclusive.
4. Page 17, line 3, to page 18, line 9, inclusive.
5. Page 22, lines 13 to 16, inclusive.
6. Page 25, line 12, to page 26, line 27, inclusive.
7. Page 30, line 6, to page 31, line 4, inclusive.
8. Page 33, lines 5 to 23, inclusive.
9. Page 34, line 22, to page 35, line 3, inclusive.
10. Page 35, line 26, to page 36, line 4, inclusive.
11. Page 36, lines 11 to 22, inclusive.
12. Page 36, line 30, to page 37, line 5, inclusive.
13. Page 38, line 7, to page 39, line 9, inclusive.
14. Page 39, lines 14 to 25, inclusive.

XII.

This designation of additional parts of the record by appellees Frank A. Garbutt, Alice Clark Ryan, Mutual Gold Corporation, and Log Cabin Mines Company.

DAVID E. HINCKLE

Attorney for appellees Frank A. Garbutt,
Alice Clark Ryan, Mutual Gold Corpora-
tion, and Long Cabin Mines Company.

Received copy of the within Designation of additional parts of the record thought to be material by appellees Frank A. Garbutt, Alice Clark Ryan, Mutual Gold Corporation, and Log Cabin Mines Company on this 13th day of March, 1942.

W. H. ABEL,
O. C. MOORE,
FREDERICK D. ANDERSON,
By FREDERICK D. ANDERSON,
Attorneys for Appellants

Received copy of the within Designation of additional parts of the record thought to be material by appellees Frank A. Garbutt, Alice Clark Ryan, Mutual Gold Corporation, and Log Cabin Mines Company on this 13th day of March, 1942.

RICHARD G. ADAMS,
By RICHARD G. ADAMS,
Attorney for Appellee Chandis
Securities Company

[Endorsed]: Filed Mar. 14, 1942.

[Title of Circuit Court of Appeals and Cause.]

SUPPLEMENTAL DESIGNATION OF
CONTENTS OF RECORD ON APPEAL

Appellants herein designate the following portions of the record, proceedings and documents transmitted to this Court by the Clerk of the District Court of the United States, for the Southern

District of California, Central Division, to be contained in the record on appeal, which portions are supplemental to those heretofore designated by appellants under date of March 3, 1942, to wit:

I. The following portions of the Reporter's Transcript of proceedings had and testimony taken on the trial:

1. Page 426, line 8, through the word "gross" in line 12.

2. Page 444, line 25, to page 445 line 14, inclusive.

3. Page 449, line 14, through the words and figures "and No. 4" in line 19, inclusive.

4. Page 541, lines 1 to 20 inclusive.

II. The following portions of the deposition of Helen M. Sutherland:

1. Page 13, line 10, to page 14, line 1, inclusive.

2. Page 14, line 14, to page 19, line 19, inclusive.

3. Page 20, line 13, to page 21, line 4, inclusive.

III. The following portions of the deposition of M. I. Higgins:

1. Page 29, lines 11 to 25 inclusive.

2. Page 30, lines 7 to 26 inclusive.

3. Page 34, line 24, to page 35, line 3, inclusive.

4. Page 35, line 12, to page 36, line 22, inclusive.

5. Page 38, lines 17 to 21 inclusive.

6. Page 39, line 1 to page 40, line 12, inclusive.

IV. The following portions of the deposition of Maybelle Higgins:

1. Page 50, lines 1 to 12 inclusive.

V. The following portions of the deposition of A. P. Bateham:

1. Page 63, line 30, to page 64, line 8, inclusive.

VI. The following portions of the deposition of Frank A. Garbutt in the case of "J. A. Vance vs. Mutual Gold Mining Company" in the Superior Court of the State of Washington in and for the City of Spokane, No. 103068, to wit:

1. Page 3, line 15, to page 5, line 5, inclusive.
2. Page 41, lines 5 to 8 inclusive.
3. Page 44, line 17 to page 48, line 12, inclusive.
4. Page 75, line 24 to page 76, line 6, inclusive.
5. Page 87, line 19, to page 88, line 13, inclusive.
6. Page 98, lines 6 to 21 inclusive.
7. Page 106, line 15 to page 107, line 15, inclusive.

VII. The following portions of the deposition of G. H. Ferbert:

1. Page 25, line 2, to page 26, line 12 inclusive.
2. Page 38, line 24, to page 39, line 14 inclusive.
3. Page 41, lines 2 to 7 inclusive.

VIII. The following portions of the deposition of J. A. Vance:

1. Page 18, line 10 to page 22, line 11, inclusive.
2. Page 22, line 17, to page 25, line 11 inclusive.
3. Page 33, lines 24 to 30, inclusive.
4. Page 37, line 6, to page 38, line 6, inclusive.
5. Page 40, line 4, to page 41, line 3, inclusive.
6. Page 44, lines 8 to 14, inclusive.
7. Page 45, lines 16 to 28, inclusive.

IX. This supplemental designation of contents of record on appeal, including stipulation set forth below.

Dated: March 25, 1942.

W. H. ABEL,
O. C. MOORE,
FREDERICK D. ANDERSON,
By FREDERICK D. ANDERSON,
Attorneys for Appellants
Address: 650 Subway Terminal Bldg.
Los Angeles, California
Telephone: MICHigan 0804

Receipt of copy of the foregoing Supplemental Designation of Contents of Record on Appeal is hereby acknowledged this 25th day of March, 1942, by David E. Hinckle, attorney for appellees Frank A. Garbutt, Alice Clark Ryan, Mutual Gold Corporation and Log Cabin Mines Company, and

It is hereby stipulated that said Supplemental Designation of Contents of Record on Appeal be included in the printed record and that appellants by such designation and stipulation do not waive any right they may have under rule 75(e), or any other rule, in connection with the designation of additional parts of the record heretofore made by said appellees.

It is further stipulated that neither appellants nor said appellees will make further designation of matters to be included in the printed record.

It is further stipulated that Exhibits 7, 63 and

“K” designated by said appellee to be included in the printed record, shall be omitted therefrom.

Dated: March 25, 1942.

DAVID E. HINCKLE,
Attorney for Appellees Frank A. Garbutt,
Alice Clark Ryan, Mutual Gold Corpora-
tion and Log Cabin Mines Company.

W. H. ABEL,
O. C. MOORE,
FREDERICK D. ANDERSON,
By FREDERICK D. ANDERSON,
Attorneys for Appellants

Receipt of copy of the foregoing Supplemental Designation of Contents of Record on Appeal with stipulation annexed thereto is hereby acknowledged this 25th day of March, 1942.

Dated: March 25, 1942.

RICHARD G. ADAMS,
Attorney for appellee Chandis
Securities Company

[Endorsed]: Filed Mar. 27, 1942.

